



**Economic Regulation Authority**

# Offer construction guideline and trading conduct guideline

Final report

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# 1. Introduction

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. In conducting its functions, the ERA aims to provide businesses and consumers with confidence that the WEM operates efficiently and effectively.<sup>4</sup> This document outlines the two guidelines developed by the ERA to assist market participants to understand and comply with the general trading obligations.

All market participants must comply with the general trading obligations from the commencement of the new WEM in October 2023.<sup>5</sup> These obligations require participants to:

- Offer prices that reflect only the costs that a market participant without market power would include in a profit-maximising price offer (WEM Rule 2.16A.1).
- Avoid conduct that is false, dishonest, or has the purpose or the effect of distorting or manipulating prices in the WEM (WEM Rule 2.16A.3).

The general trading obligations prohibit conduct likely to undermine competition in the WEM and increase the cost of electricity for end consumers.

The ERA's offer construction guideline and trading conduct guideline are intended to provide regulatory guidance on these obligations for all participants in the short-term energy market (STEM) and Real-Time Market, which includes the frequency co-optimised essential system services (FCESS) markets. The guidelines contain simplified examples to illustrate the behaviour expected of different facility types, including co-located and hybrid electric storage resources.

Stakeholder feedback has assisted the ERA to produce the current versions of each guideline. Formal submissions received are listed at Appendix 1. A detailed list of issues raised by stakeholders and the ERA's response to each issue is provided at Appendix 2

The ERA may amend the guidelines when it considers necessary. For example, the ERA may choose to update the guidelines after responding to a request for guidance from a market participant.<sup>6</sup> When considering the need for an amendment to the guidelines, the ERA will take into account the views of market participants and other WEM stakeholders.

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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> Economic Regulation Authority. Statement of Strategic Intent, 2023-2025 ([online](#)).

<sup>5</sup> Clause 2.16A in the Consolidated Companion version of the WEM Rules, which is the WEM Rules intended to be in force from commencement of the new market, ([online](#)).

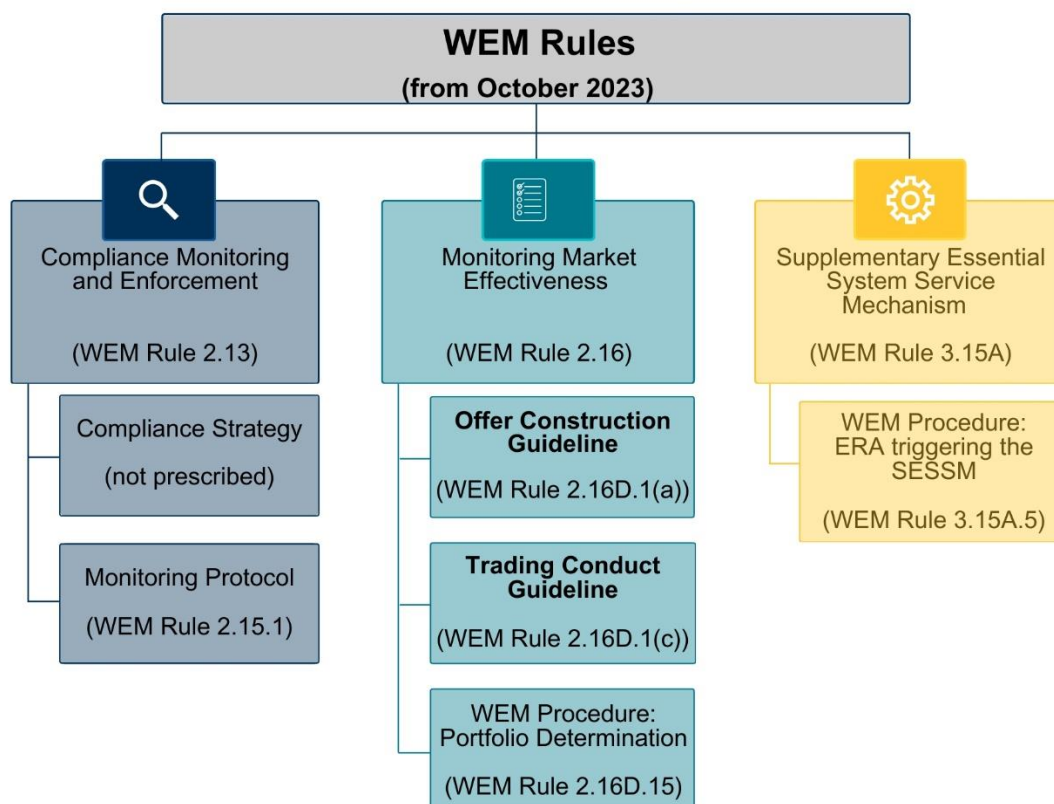
<sup>6</sup> Under clause 2.16D.7 market participants may request offer construction guidance from the ERA, ([online](#)).

## 2. Regulatory guidance

In addition to the two guidelines, the ERA has developed other regulatory guidance documents to assist stakeholders to understand and comply with their obligations in the new WEM (see [Figure 1](#)). Three ERA WEM Procedures will commence at new market start:

- Portfolio Determination WEM Procedure (WEM Rule 2.16D.15).
- ERA triggering the Supplementary Essential System Service Mechanism (SESSM) WEM Procedure (WEM Rule 3.15A.5).
- Updated Monitoring Protocol WEM Procedure (WEM Rule 2.15.1).

**Figure 1: The ERA's regulatory guidance documents<sup>7</sup>**



Market participants must comply with any obligations under their regulatory frameworks. Market participants remain responsible for ensuring that their conduct is compliant with any of their obligations under the WEM Rules. Market participants may need to obtain any necessary legal, economic, or other technical advice that they think is required in order to ensure that their conduct is compliant with the WEM Rules. This Guideline is not a substitute for that legal, economic, or other technical advice as the ERA's guidelines do not reproduce all requirements in the WEM Rules. Market participants are advised to refer to the WEM Rules for a full list of obligations.

<sup>7</sup> The ERA's compliance strategy set out its approach to monitoring and enforcing compliance but is not prescribed by the WEM Rules, ([online](#)).

## 2.1 Compliance monitoring and enforcement

The ERA has a broad function to monitor the market for compliance with the WEM Rules and to investigate behaviour if it considers the behaviour has resulted in the market not functioning effectively (WEM Rule 2.13.2).

The two guidelines inform participants of the types of conduct and indicators of non-compliance the ERA will be monitoring regarding the general trading obligations. Maintaining adequate records will assist market participants to demonstrate to the ERA that their conduct is consistent with the general trading obligations (WEM Rules 2.16A.1 or 2.16A.3).

The ERA's Monitoring Protocol WEM Procedure sets out how the ERA will monitor, investigate and enforce compliance.<sup>8</sup> The ERA will conduct any investigation of a potential breach of the general trading obligations in accordance with the Monitoring Protocol WEM Procedure. The ERA's Compliance Framework and Strategy describes how the ERA undertakes its compliance activities and has been updated in preparation for the start of the new WEM in October 2023.

During consultation on the ERA's draft guidelines and draft WEM Procedures in July 2023, several stakeholders requested that a transition or amnesty period be applied while participants were familiarising themselves with the new WEM and establishing internal systems to comply. However, there is no such amnesty or transition period allowed in the WEM Rules.

The ERA must investigate alleged breaches in accordance with an assigned risk rating and whether a matter is a breach will be determined based on the evidence available. The ERA will always consider the relevant circumstances applicable to each confirmed breach when determining the appropriate enforcement action for that breach. If a market participant's relative inexperience with new processes is found to be a contributing factor, the ERA would consider it a relevant circumstance.

The ERA is obliged to investigate all matters in accordance with the WEM Rules that were in effect at the time the breach occurred. Only suspected breaches that occur after new WEM Rules come into effect can be investigated in accordance with an assigned risk rating. In the new WEM, participants are required to self-report suspected breaches.

In the new WEM, the ERA will continue to perform its monitoring functions using the method and information it considers most appropriate to the obligation being monitored.

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<sup>8</sup> Economic Regulation Authority, 2023, Monitoring Protocol WEM Procedure ([online](#)).

### 3. Offer construction guideline

In the new WEM, a market participant must offer prices that reflect only the costs a participant without market power would include in forming profit-maximising price offers (WEM Rule 2.16A.1). To assess compliance with this clause, the ERA will identify irregular price offers, that is, where a price offered by a market participant in its:

- Portfolio supply curve was inconsistent with the price that a market participant without market power would offer in a profit-maximising portfolio supply curve; or
- Real-Time Market submission was inconsistent with the price that a profit-maximising market participant without market power would offer in a Real-Time Market submission.

(WEM Rule 2.16C.6 (c) and (d))

The new WEM Rules require the ERA to monitor the offers of participants with facilities in a material portfolio or a material constrained portfolio. The ERA's process for identifying these portfolios is set out in a WEM Procedure.<sup>9</sup> In addition, offers from a market participant that were not being monitored as part of a material portfolio or a material constrained portfolio may be investigated for a breach of WEM Rule 2.16A.1.<sup>10</sup>

A market participant may only be found to be in breach of WEM Rule 2.16A.1 if the ERA determines the participant had market power when it made the offers (WEM Rule 2.16A.2). The ERA must also determine that the irregular price offer has resulted in an inefficient market outcome (WEM Rule 2.16C.5).

In accordance with WEM Rule 2.16D.1(a), the ERA developed a guideline that:

- a. Provides guidance to market participants in relation to the price offer obligations under WEM Rule 2.16A.1;
- b. Details how the ERA will assess prices offered under WEM Rule 2.16C.6;
- c. Permits the recovery of all efficient variable costs of producing the relevant electricity, including all costs incurred under long-term take-or-pay fuel contracts;
- d. Outlines how the Economic Regulation Authority will consider price offers for different Facility types, including Electric Storage Resources;
- e. Provides examples illustrating the types of conduct that the ERA considers would be likely to contravene the price offer obligations under WEM Rule 2.16A.1; and
- f. Provides guidance to market participants on how the ERA will assess inefficient market outcomes under WEM Rule 2.16C.7.

#### 3.1 Updates to the offer construction guideline

Stakeholders provided constructive feedback on the draft offer construction guideline and the ERA has made amendments to provide the clarity requested, without making the guideline more prescriptive. When amending the guideline, the ERA considered the general principle

<sup>9</sup> Required by WEM Rule 2.16D.15. WEM Procedure: Portfolio Determination ([online](#)).

<sup>10</sup> WEM Rule 2.16C.11 allows the ERA to investigate any alleged breach of WEM Rule 2.16A.1.

that, in making a Price-Quantity Pair offer, market participants may include the efficient variable cost of making and honouring that offer, relative to not making that offer.

In updating the guideline, the ERA has considered how offer construction affects pricing outcomes for electricity consumers and has provided more detailed guidance, where appropriate, to assist market participants. The guideline offers a comprehensive overview of how the ERA intends to interpret the WEM Rules regarding supply cost estimation.

Avoiding excessive rigidity in guidelines is important as overly prescriptive guidance can lead to uncertainty among market participants. This uncertainty arises due to the diverse array of factors that affect supply costs, which continuously evolve due to operational changes – for example, driven by variation in dispatch profile of facilities resulting from the entry of renewable energy technologies and storage facilities – technological advancements, and the influx of new information.

Attempting to establish intricate procedures for cost calculations is both impractical and counterproductive. Nonetheless, amidst the multitude of factors and their dynamic nature, the fundamental principles guiding the determination of price offers remain consistent. The offer construction guideline serves as a foundation for crafting offers that maintain relevance across time and technological and operational shifts.

Illustrative examples within the guideline serve to demonstrate the practical application of these principles. These examples effectively isolate the influence of particular individual factors on offers. By collectively considering these examples, the guideline seeks to impart clear direction on constructing price offers, taking into account the primary factors that shape supply costs.

In the updated guideline the ERA has only included changes that it considers substantial enough to be presented in general guidance to the market. Amendments to the draft guideline include some additional costs raised in submissions and a clarification on the estimation methods for some classes of costs.

The recovery of fuel costs was a major topic of feedback, including how costs incurred under long-term take or pay (LTTOP) fuel contracts may be recovered.

The guideline clarifies that market participants should include the incremental fuel costs when forming their offers and avoid averaging fuel prices or using the highest fuel price across their fuel supply arrangements or contracts. Section 4.3 in the guideline provide details on the recovery of fuel costs, including details on when multiple fuel supply arrangements apply.

When forming their offers, market participants can flexibly use their take-or-pay volumes between generators and across time within the constraints of their contracts. However, the guideline also notes that in allocating their take-or-pay volumes a market participant may be breaching WEM Rule 2.16A.3 if it distorts market prices.

In related feedback, a submission noted that the guideline does not allow for the recovery of fixed transport capacity reservation charges, and this may encourage market participants to avoid fixed transport costs, sourcing fuel transport service through high-cost variable price contracts in order to recover costs through energy market. The guideline now clarifies that the incremental cost of fuel transport charges will be allowed in the offers. These incremental costs can be determined based on prevailing market prices for fuel transport service.

The ERA has also amended the guideline to apply a consistent referencing style for the WEM Rules and made other minor typographical and grammatical improvements.



## 4. Trading conduct guideline

The trading conduct guideline is intended to provide, in accordance with WEM Rule 2.16D.1(b):<sup>11</sup>

- Clarity and guidance to market participants regarding the prohibited conduct described in WEM Rule 2.16A.3.
- Examples illustrating the types of conduct that the ERA considers would be likely to contravene WEM Rule 2.16A.3

WEM Rule 2.16A.3 broadly prohibits making ‘bad faith’ submissions to the STEM and Real-Time Market, which includes conduct that is false, misleading, or likely to mislead, or has the effect of distorting or manipulating prices in the market.

### 4.1 Updates to the trading conduct guideline

Submissions on the draft trading conduct guideline sought clarification on two broad areas (listed in Appendix 1): firstly, on meeting the requirements of WEM Rule 2.16A.3 while also meeting operational requirements, and secondly in relationship to Part XICA of the *Competition and Consumer Act 2010 (Cwlth)* (CCA).

Updates to the guideline clarify situations, such as forced outages, in response to market participants expressing concern that a genuine operational reason may prevent them from applying the trading conduct guideline. Stakeholders’ queries on the use of credible external sources of information are also addressed in the updated guideline.

Stakeholders referred to the Australian Competition and Consumer Commission’s guidance on complying with Part XICA of the CCA.<sup>12</sup> The ERA will be monitoring conduct for compliance with WEM Rule 2.16A.3, which imposes different requirements on market participants with Part XICA of the CCA. For example, WEM Rule 2.16A.3 concerns conduct that has the purpose or has, or is likely to have the effect of distorting prices. In contrast, a corporation may contravene 153G of the CCA if its behaviour is *for the purpose of* distorting prices.<sup>13</sup>

The ERA has also amended the guideline to apply a consistent referencing style for the WEM Rules and made other minor typographical and grammatical improvements.

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<sup>11</sup> Economic Regulation Authority, 2023, Trading conduct guideline ([online](#)).

<sup>12</sup> ACCC, *Guidelines on Part XICA: Prohibited conduct in the energy market* May 2020, ([online](#)).

<sup>13</sup> ACCC, *Guidelines on Part XICA: Prohibited conduct in the energy market* May 2020, p.24 ([online](#)).

## Appendix 1 Submissions received

Stakeholder feedback has assisted the ERA to develop the offer construction guideline and trading conduct guideline. All formal submissions received during the public consultation processes are listed in Table 1 and Table 2.

The draft offer construction guideline was published for public consultation on 23 December 2022.<sup>14</sup> Submissions closed on 17 February 2023 and all seven submissions received are published on the ERA's website.

**Table 1: Submissions received February 2023 on the draft offer construction guideline**

Stakeholder	Link
Alinta Energy	<a href="#">ERA website</a>
Australian Energy Council (AEC)	<a href="#">ERA website</a>
Bright Energy Investments	<a href="#">ERA website</a>
Collgar Renewables	<a href="#">ERA website</a>
Shell Energy	<a href="#">ERA website</a>
Synergy	<a href="#">ERA website</a>
TransAlta	<a href="#">ERA website</a>

Feedback from stakeholders was summarised with the ERA's response to each issue raised in the ERA's draft report, published 21 June 2023.<sup>15</sup> The ERA made substantial changes to the updated draft offer construction guideline to address stakeholder feedback and incorporate updates made to the amending WEM Rules since the draft guideline was first published.

The ERA sought stakeholder feedback on the updated draft offer construction guideline and on the trading conduct guideline. Submissions closed on 18 July 2023 and feedback was received from seven stakeholders.

**Table 2: Submissions received July 2023**

Stakeholder	Submission received	Link
AGL	Offer construction guideline and trading conduct guideline	<a href="#">ERA website</a>
Alinta Energy	Offer construction guideline and trading conduct guideline	<a href="#">ERA website</a>
Australian Energy Council	Offer construction guideline and trading conduct guideline	<a href="#">ERA website</a>
Bright Energy Investments	Offer construction guideline	<a href="#">ERA website</a>
Shell Energy	Offer construction guideline and trading conduct guideline	<a href="#">ERA website</a>
Synergy	Offer construction guideline and trading conduct guideline	<a href="#">ERA website</a>
TransAlta	Trading conduct guideline	<a href="#">ERA website</a>

<sup>14</sup> Economic Regulation Authority, 2023, draft offer construction guideline ([online](#)).

<sup>15</sup> Economic Regulation Authority, 2023, Draft Report, Request for submissions on draft guidelines ([online](#)).

## Appendix 2 ERA response to stakeholder issues

Submissions from stakeholders sought clarity on similar issues in the guidelines. The ERA's response to each issue raised, and any changes made to sections of each guideline, is listed in Table 3 for the offer construction guideline and Table 4 for the trading conduct guideline.

**Table 3: ERA response to stakeholder issues – Offer construction guideline**

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
1	AEC Shell Energy	General Comment	Shell Energy is concerned the Guideline offers no certainty to Market Participants in recovering costs, but being overly prescriptive, would add to complexity and uncertainty. The AEC describes the Guideline as prescriptive and economic purist which could force Market Participants into lower offers than optimal and contribute to the revenue sufficiency problem.	The AEC encourages avoiding a theoretical economic approach to determining offers and instead assess pricing conduct in the context of a real-world competitive market.	The ERA rejects the claim that the guideline is prescriptive and uses an economic purist approach, noting that the AEC makes only a general claim and does not provide a specific example as to where it considers the ERA has framed the guideline in this manner. The guideline is not prescriptive as it is designed to show general concepts of how the ERA intends to interpret the WEM Rules regarding supply cost estimation. In line with Shell Energy's perspective, the ERA recognises the importance of avoiding excessive rigidity in guidelines, as overly prescriptive guidance can lead to uncertainty among market participants. This uncertainty arises due to the diverse array of factors that impact supply costs, which continuously evolve due to operational changes, technological advancements, and the influx of new information.	No change required.
<b>1. Test of Market Power [section 3]</b>						
2	AEC	Determination of market	The "theoretical economic approach is disproportionate	The ERA should reconsider its approach	The ERA rejects the claim that the guideline uses a 'theoretical' approach	No change required.

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
		power and recovery of costs.	overly onerous and will discourage new investment." Energy Policy WA's Reserve Capacity Mechanism Review and ERA's 2022 <i>Triennial Review of the WEM</i> both discuss revenue insufficiency. <sup>16</sup>	of determining market power.	to determining market power and considers that the approach to market power in the Guideline is appropriate for the WEM.  Unlike an energy-only market (such as the National Electricity Market) the Market Participants in the WEM do not need to use temporary or transitory market power to occasionally raise prices to recover their capital costs. The ERA's Triennial Review of the Effectiveness of the Wholesale Electricity Market 2022 <sup>17</sup> identified a structural issue in the market that needs to be solved by market reform and not by Market Participants exercising market power in WEM markets.	
3	AGL Shell Energy Synergy	Determination of market power	AGL notes that some small participants will have market power for short periods of time due to, for example, transmission network changes. Operating as though they always have market power, places a further burden on participants and may lead to unintended consequences. Shell Energy believe that isolated instances of pricing change that do not result in a	Synergy disagrees with the narrow approach to the impact test and suggest revising this statement in the Guideline: "for the purpose of clause 2.16A.2 the ability of a Market Participant to raise prices for any period of time will be sufficient to establish that	WEM Rule 2.16A.1 requires all Market Participants to offer prices that reflect only the costs that a Market Participant without market power would include. Irregular price offers can result in inefficient market outcomes during one or several trading intervals when a Market Participant can influence market prices. The WEM is a dual capacity/energy market. Unlike an energy-only market (such as the National Electricity Market) the Market Participants in the WEM do not need to	No change required.

<sup>16</sup> Energy Policy WA, 3 May 2023 *Reserve Capacity Mechanism Review* ([online](#)).

<sup>17</sup> Economic Regulation Authority, *Wholesale Electricity Market Effectiveness Report 2022* ([online](#)).

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
			material impact to market outcomes is not an efficient nor effective tool in determining market power.	the Market Participant has market power." Shell Energy encourage a pragmatic approach to the test of market power.	use temporary or transitory market power to occasionally raise prices to recover their capital costs. The ERA's WEM Procedure: Monitoring Protocol outlines how the ERA considers the impact of possible breaches of the WEM Rules on the market when enforcing compliance.	
<b>2. Efficient Variable Costs [section 4.1]</b>						
4	AEC	Expert advice	Where is the cost of obtaining the expert advice recovered?		The cost of obtaining expert advice on constructing offers is fixed with respect to the production of energy, essential system services or forward sale of energy in the STEM. The incremental cost of producing energy does not contain these fixed costs. The guideline (section 4.2) explains how the formation of offers based on incremental efficient variable costs provides for cost recovery consistent with the WEM Rules. Fixed costs can be recovered through the Reserve Capacity Mechanism.	No change required.
5	Synergy	Operational dispatch decisions	The focus on theoretical 'short-term' efficient prices will incentivise Market Participants to enter high-cost short-term variable contracts, even where it is more efficient overall for it have entered into longer-term contracts with a fixed component.	The Guideline should be amended to acknowledge that a profit-maximising Market Participant without market power will often make dispatch decisions that are efficient, reasonable and prudent based on longer-term and/or risk-based assessments.	The ERA rejects the claim that it focuses on 'theoretical short-term' prices in the guideline. Businesses make decisions to minimise costs and manage risks based on short- and long-term considerations. The Guideline is consistent with this commercial behaviour and does not inhibit businesses to manage their risks and costs as effectively as possible.	No change required.

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
					Consistent with the commercial behaviour of profit maximising market participants (that do not have market power) the guideline allows market participants to price in their inputs to electricity generation based on prevailing market prices for those inputs. Commercial entities form views about future prices of their inputs and decide to manage their commercial risk through spot markets, short-term contracts or long-term contracts for their inputs and/or outputs.	
6	Synergy	Ride through costs	As the market evolves it may become more common for gas fired generators to expect to 'ride-through' a few Dispatch Intervals at a loss to be available for profitable Dispatch Intervals, while avoiding the cost of shutting down and quickly re-starting.	Allow for Market Participants to include the costs of efficient 'ride through' in their offers. Amend Table 1 to include ride-through costs.	Inclusion of 'ride-through' costs, where costs from several Dispatch Intervals during a run cycle are amortised over other Dispatch Intervals in the same run cycle, is equivalent to allocating costs flexibly over a run cycle and is acceptable. A Market Participant may not allocate costs in such a way as to manipulate the market price as this could breach WEM Rule 2.16A.3.	Changes made to clarify under and over recovery in section 4.6.1
7	Synergy	Enablement/ramping costs inconsistently applied in the Guideline.	Enablement losses are separately listed in some, but not all the tables within the Guideline.	-	Ramping costs and enablement costs were used interchangeably in the draft Guideline.	Tables 1, 3, 5, 7 and 9 now consistently use 'enablement costs'.
8	Synergy	Periodic maintenance cost recovery. Accounting for start-up costs.	Recovery of start-up costs: The Guideline allows only variable costs and avoidable fixed-costs to be taken into account when determining market offer price.	Clarify the references to permissible periodic maintenance and the extent to which it may be included in the	Maintenance required periodically regardless of operation is not recoverable in offers, while maintenance costs incurred due to start-ups or generation, (and possibly	Section 4.4 and Table 1 updated to remove the clarify that maintenance required regardless

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
			The ERA's position in the recent ERB case, was that periodic maintenance was not a valid component of start-up costs for the purpose of determining the facility's market offer price.	calculations of start-up costs and shut-down costs.	bundled into annual contracts) are recoverable. Costs already accounted for cannot be included again: for example, if VOM and start-up costs are combined, these costs cannot then be recovered as separate items.	of the operation of a generator is not recoverable in offers.
<b>3. Efficient variable cost and Price-Quantity Pairs [section 4.2]</b>						
9	Synergy	Other Efficient ESS Costs	ESS costs that are incurred due to facility operation should be allowed to be included in the construction of offers.	Suggest Tables 1, 3, 5, 6, 7 and 9 are amended to include other ESS costs where appropriate.	<p>FCESS costs to be included in offers can be classified into:</p> <ul style="list-style-type: none"> <li>- costs of operating at a less efficient level (e.g. due to increased fuel consumption);</li> <li>- higher \$/MWh start-up costs;</li> <li>- additional operating and maintenance; and</li> <li>- other costs.</li> </ul> <p>These are costs already included in the Guideline, but Tables 3 and 5 did not include an 'Other costs' category. Additionally, Runway Cost of Contingency Reserve Raise (CRR) is included in Market Participant costs in Table 1 as generators pay for the cost of procuring CRR in proportion to their energy output.</p>	Amend Tables 3 and 5 now include 'Other costs'. Table 1 now clarifies that other costs may include any ESS charges payable by Facilities that vary with the production of energy.
10	Synergy	Efficient variable costs (EVC) Incremental Efficient variable costs (IEVC)	The current drafting could imply the revenues the Market Participant receives from the market are not to be above the EVCs, rather than implying that the method used, and bids offered must not be above the EVCs.	Revise the statement on the lack of a standard approach to converting IEVCs into Price-Quantity Pairs to clarify that "a Market Participant may not use a conversion method that would be expected to lead to the	Market Participants may use their own method to convert their production cost to Price-Quantity Pair offers instead of the Average Operating Cost (AOC) method, as long as: (1) it does not systematically over-recover costs if it were paid its offer price, and (2) they do not use the method to manipulate	Section 4.2 updated to clarify that Market Participants may use methods other than the AOC method.

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
				over-recovery of EVCs in their offers over time.”	market prices, which may be a breach of WEM Rule 2.16A.3.	
<b>4. Fuel Costs [section 4.3]</b>						
11	AEC AGL Synergy	Multiple fuel contracts. Pre-transport fuel-input-cost Example 6	Fuel arrangements are often complex involving multiple contracts with daily, monthly and yearly volumes.	The AEC asks for guidance on how Market Participants should price fuel when the contracts use a mix of volume periods. Synergy requests clarity on how to construct offers when fuel contracts have different levels of “firmness”, start dates and duration, whether the Market Participant is long or short on fuel and the quantity expected to be available to purchase/sell, the extent to which the Market Participant has an obligation to seek out evidence of the prevailing market price.	<p>The offer construction guideline offers general advice in the form of principles for Market Participants to form their offers and does not cover every specific situation. Market Participants should form their offers with respect to this guidance.</p> <p>When forming a Price-Quantity Pair, a Market Participant can use its marginal (incremental) fuel-input price for its expected fuel use – having consideration for its different fuel sources for the respective supply quantities in that Price-Quantity Pair.</p> <p>A profit-maximising Market Participant without market power would value the fuel from each of its sources at its respective opportunity cost, which is the prevailing market price for that fuel supply.</p> <p>An exception to opportunity cost based marginal fuel cost is contained in WEM Rule 2.16D.1(a)(iii), which states that a Market Participant may recover the cost of a LTTOP fuel contract in its offers. This means a Market Participant's price-quantity offers are consistent with WEM Rule 2.16A.1, if it has a LTTOP contract that is out-of-the-money, and uses its LTTOP contract price (the unit price</p>	Clarification added to section 4.3.2 and Example 6.



#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
					<p>applicable to take-or-pay quantities) as <i>if</i> the contract price is its marginal fuel-input-cost.</p> <p>Market Participants may use their different fuel sources flexibly throughout time, but must offer prices consistent with the Trading Conduct Guidelines. For example, Market Participants may breach WEM Rule 2.16A.3 if they prioritise to recover their costs under LTTOP fuel contracts that are out-of-the-money during periods their facilities (fuelled through the LTTOP fuel contracts) set market prices – while they have opportunity to recover those LTTOP costs during periods they do not set market prices.</p>	
12	Synergy	Long-Term Take-or-Pay (LTTOP) contracts.	<p>Can a Market Participant with a LTTOP contract use that per unit cost as its fuel input cost regardless of the extent of its LTTOP contract commitment compared to its fuel requirements for electricity production?</p> <p>Alternatively, are there any limits on the extent to which a LTTOP contract price can be used?</p>	Provide real-world examples and guidance on how these various fuel cost components can be considered and accounted for in compliant offers.	See responses to item 11	See item 11
13	Synergy	LTTOP contracts	LTTOP contracts often contain yearly take-or-pay quantities and may or may not also contain, conditional, multi-year provisions allowing for any paid for but unused gas to be consumed in later years	How should a Market Participant compliantly account for LTTOP contracts that do not have daily take-or-pay quantities?	See response to item 11.	See item 11.

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
14	Synergy	LTTOP contracts	LTTOP contracts may be used for purposes such as retail supply.	How should a Market Participant compliantly account for LTTOP contracts that are used partly for generation and partly for other purposes?	See response to item 11.	See item 11.
15	Synergy	LTTOP contracts Examples 4 and 5	Is there a threshold for determining a LTTOP contract, or does only the quantity of gas matter?	What constitutes a LTTOP contract?	The Guideline notes that a LTTOP fuel contract is defined by the term of a contract rather than quantities, in that it runs for a period of at least a year (section 4.2.2).	Clarification added to section 4.3.2 with a new footnote to clarify what constitutes a LTTOP contract.
16	Synergy	LTTOP contracts	The Guideline states that a Market Participant may apply the highest fuel-input cost that it expects to incur when forming its offers.	May a Market Participant apply the highest fuel-input cost that it expects to incur, and would this be the case if the Market Participant had a very small, but high-priced LTTOP contract?	See response to item 11.	See item 11.
17	Shell Energy	Short-Term Take or Pay (STTOP) gas contracts	During unplanned gas outage events, gas generators enter into the market to source STTOP gas contracts but are met with increased prices due to tightness in gas market balance.	Provide example of Short-term-take-or-pay fuel contract.	There is no specific exemption or allowance for STTOP contracts under the WEM Rules. Market Participants may opt to trade short-term contracts for fuel to avoid the risk of committing to long-term contracts that become out-of-the-money. STTOP contracts are covered in section 4.3.2, which clarifies fuels sourced through non-LTTOP fuel contracts (e.g. short-term take-or-pay contracts) are to be priced at its opportunity cost (the prevailing market price of gas).	No change required.

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
18	Synergy	Tiered fuel and fuel transport contracts	Market Participant development of any tiered fuel pricing approach would require substantial additional guidance from the ERA such that adequate processes and systems could be compliantly developed.	Will a tiered fuel and transport pricing approach be mandatory, and how could it be implemented. Provide guidance on which generators and services should be allocated 'cheap' tiers, and when. Would Market Participants be expected to apply a tiered approach across each generation unit separately, or a tiered input approach across all generation units.	The Guideline provides general guidance on how to incorporate tiered fuel contract prices and volumes into Price-Quantity Pair offers but does not provide guidance on every specific situation. Refer to responses to item 11. The Guideline also clarifies fuel transport costs are to be based on the prevailing market price for fuel transport service applicable to each Facility. A Market Participant may not allocate different fuel or fuel-transport costs in such a way as to manipulate the market price, as this could represent a breach of the WEM Rule 2.16A.3.	Clarified in section 4.3.3.
19	Synergy	Participants with multiple fuel transport services.	If variable transport costs are not monotonically increasing, should variable transport costs be averaged when determining a final, delivered cost of gas?	Over what period of time should variable transport costs be estimated?	See response to item 18.	See item 18.
20	AEC	Fuel transport cost	The Guideline may encourage Market Participants to avoid 'fixed' transport costs and enter into higher cost variable contracts, passing higher costs to the market.	How do Market Participants deal with a situation where the spot transport price is lower than long-term contracts and they are out of the money?	See response to item 18.	See item 18.
21	AGL	Fuel transport cost	Market price can be used for gas purchases to an extent, but not for gas transport. Reserve capacity fuel security obligations recovering fuel transport costs	AGL notes AEMO's comment that any financial obligation to acquire firm gas contracts and gas transport contracts, to	See response to item 18.	See item 18.

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
				meet reserve capacity fuel security obligations, would be recoverable through the bidding process. This does not appear to be the case, leaving operators of firming capacity commercially exposed, deterring investment.		
22	Synergy	How to forecast 'market prices'.	In the absence of a LTTOP contract, the Guideline outlines that fuel from variable contracts should be valued at opportunity cost.	The Guideline should be amended to provide guidance and examples outlining how the market price of fuels can be compliantly determined.	A Market Participant may make its own forecast of the market price of fuel. To do this it may use the spot-market-price (if available) but may also include other information including data obtained through bespoke contract negotiations.	Section 4.3.2 has been updated to note that, when forming a view on the prevailing price of gas a Market Participant may form a view on the most appropriate way to estimate this price.
23	Synergy	Storage costs	Lack of guidance on how to determine a value for the cost of gas drawn from, injected into or held in storage.	Would a valuation framework for valuing stored gas at its opportunity cost be acceptable?	Stored gas may be valued at its opportunity cost, as long as this is reasonable and backed by expert analysis.	Clarified in section 4.3.2.
<b>5. Variable operating and maintenance (VOM) [section 4.4]</b>						
24	Synergy	VOM cost component	The permissibility of including costs associated with Long Term Service Agreements within the VOM costs component.	Do "bundled annual costs" in refer to Long Term Service Agreements? Provide clear definitions of annual operating	Market Participants may bundle fixed, variable and start-up related maintenance costs in Long-term Service Agreement contracts. Splitting the maintenance into fixed and variable for the purposes of forming offers can	Text added to clarify this point in sections 4.4 and 4.6.1.

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
				expenses and annual maintenance expenses, and the costs included in each. Provide clarity in terms of the definitions and allowable costs for each of the offer construction components, suggest the ERA provides a level of detail similar to section 2.6.1 and 2.6.2 of the PJM report.	be done having consideration for the components of VOM costs before bundling of those costs.	
25	Synergy	Examples 9 and 10	The Guideline provides no clarity on whether VO&M costs incurred across many years of a facility must account for the forecast time value of money (e.g. inflation indexation) or can be based on a 'snapshot' of current costs approach.	Set out how to compliantly adjust long-term costs for the time value of money, including how to account for extreme variability in input costs. Explain how to calculate a compliant discount rate.	A Market Participant should incorporate the time value of money into its calculation of operating and maintenance costs. Market Participants are expected to determine an appropriate discount rate that reflects their marginal cost of capital.	No changes required.
<b>6. Avoidable Costs [section 4.6]</b>						
26	AEC	Start-up costs Example 8	The AEC notes that Example 8 highlights the risk of a generator forecasting dispatch periods then generating for a shorter timeframe and not recovering all the start-up costs.	The AEC requests greater flexibility for generators to: 1. Recover more of start-up costs across initial intervals to ensure all costs are recouped. 2. Shape prices so that they can offer lower prices to ensure they can ramp up or ride through, and then recover the	The Guideline uses a linear allocation of start-up costs as an example. An approach which demonstrates reasonable forecasting and cost recovery, that does not contribute to distorting market prices (WEM Rule 2.16A.3) is acceptable. For example, the participant might see uncertainty and want to recover more of the start-up cost in initial intervals but then would have lower price offers in subsequent Dispatch Intervals.	Clarifying text added to sections 4.6.1 and 4.2.1. to allow deviations from the Average Operating Cost method (which is used as an example in the guideline).

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
				costs at later, higher priced intervals.		No change needed to Example 8.
27	AEC Shell Energy	Start-up costs Example 11	The AEC states that 'capping' the minimum offer price to the avoided start-up costs will have a significant impact on generators and available generation. Shell Energy notes that Example 11 appears to limit the minimum price offer.	Both Shell Energy and the AEC do not support capping a minimum price offer and suggest the ERA reconsider this approach. The AEC request a practical approach, allowing generators to consider operational reasons when determining their bidding strategy.	The Guideline does not set a cap or floor for a compliant offer price. Instead, the example demonstrates the principle. section 5.2 of the Guideline notes that Market Participants may offer below cost if they wish.	No change required.
28	Shell Energy	Start-up costs Example 9 Example 10	Shell Energy lists reasons why the examples are challenging to relate to in practice and do not provide a robust illustration of efficient cost recovery. 1. It is difficult for a generator to have expectations on the number of starts it will incur, at the start of its lifecycle, without any prior operating experience, especially as market conditions are expected to become more volatile. 2. If a generator cannot be reasonably expected to forecast with accuracy on the number of starts that it will incur at the start of its life; and if it is only compliant to amortise the cost over the entire life of the generator, then it is unclear	Consider that any incremental costs that arise during generator life, are able to be recovered: 1. From the time when its number of starts to be incurred will increase 2. Over the remaining period between when such realisation is made and up to the moment of having to pay the service contractor.	A Market Participant making an investment the scale of an electricity generator in the WEM understands the likely operation of that generator.  <ul style="list-style-type: none"> <li>The ERA understands that maintenance and parts replacement costs are typically driven by production of electricity, hours of dispatch or number of starts/stops. A Market Participant forecasts starts or hours of generation and forecasts the maintenance schedule of the plant and related costs into the future given the remainder life of the plant. Based on these forecasts they may negotiate maintenance contracts. They can recover these future costs by amortising these</li> </ul>	No change required.

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
			whether a generator can efficiently recover its cost at all.		<p>costs over dispatch cycles in the form of start-up costs.</p> <ul style="list-style-type: none"> <li>A Market Participant will only include parts replacement in its offers if the parts fully depreciate within the life of the plant and it is commercially worthwhile to replace the parts given the remaining life of its generator.</li> </ul> <p>Once this cost has been allocated to the Market Participant's VOM or SUC, it will be recovered as when the number of starts, MWh or hours of operation is incurred. There may be some under or over recovery of costs due to present value effects if the timing of starts and/or production differs from forecast, which can be recouped or reimbursed as necessary in future offers once the Market Participant has identified (for example, after operating for one year a market participant could re-forecast its annual starts).</p> <p>At the start of a plant's life, a Market Participant may form a view about the operating regime of the plant based on its forecast of market prices and its dispatch costs and the operation of similar plants in the system. It may review its forecasts based on its realized operation profile (for example, after the first year of operation).</p>	

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
29	Synergy	Start-up cost definition	Synergy provides an alternative definition of start-up costs to that presented by the ERA in section 4.4.	Revise start-up cost definition.	Noted	Start-up cost definition amended in table 1. Footnote explaining start up costs in section 4.1 removed
30	AEC	Section 6.4	How should wind and solar generators recover operating and maintenance costs if they have no startup costs?	-	Operating and maintenance cost allowance is included in examples for these resources.	No change required.
31	Synergy	Shut-down costs	Are enablement losses incurred while ramping down allowed to be considered as part of the costs associated with shutdown in section 4.6.2.	Provide clarity on the allowed costs to be considered in this component.	Enablement costs are a separate cost category and should not be included in shut-down costs.	Section 4.6.2 updated to replace 'ramping costs' with enablement costs.'
<b>7. Other costs</b>						
32	Bright Energy	Corporate overheads section 4.8 Demonstrate reasoning for other costs.	Market Participants should be allowed to recover other costs that could be genuine costs, but which are unrelated to power generation such as financing costs and head office overheads.	Allow Market Participants to demonstrate the reasoning for allowing any other commercial drivers, unrelated to market power abuse. Then provide clarity on how a Market Participant's demonstration would be assessed and how it can obtain reliable guidance on a pricing mechanism, including any appeal process.	Head office costs are fixed costs and not recoverable in offers. WEM Rule 2.16D.5 allows Market Participants to request guidance from the ERA on offer construction. Details on how to request guidance are provided in the ERA new Portfolio Determination WEM Procedure. <sup>18</sup>	No change required.

<sup>18</sup> Economic Regulation Authority, 2023 Portfolio Determination WEM Procedure (online).



#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
33	AEC	Market Fees	The AEC considers that it is not viable for generators to absorb market fees in an environment where they already recover insufficient revenue.	Clarification from the ERA on how generators can recover these market fees.	Section 4.5.1 of the Guideline states that Market Fees not related to production are fixed costs and not recoverable in offers. These costs are included in the Benchmark Reserve Capacity Price.	No change required.
<b>8. Forecasting and Uncertainty [section 5.1]</b>						
34	AEC Synergy	Forecast errors. Opportunity costs are often based on human judgment making the repeatable aspect of an offer difficult.	The AEC is concerned that Market Participants are expected to forecast their run-time, production and costs using a simple, repeatable, and mechanistic method. Synergy suggests it is unreasonable to expect all error factors can be corrected or even out overtime. Forecast errors can be caused by data provided by third parties, variations inaccuracy of AEMO forecast.	The AEC request removal of the expectation that each offer will be calculated using the same "repeatable" and "mechanistic" method. The AEC recommend providing more detail about how the ERA will assess and verify judgements made by Market Participants.	A Market Participant needs to pursue consistency in the formation of its offers, within its capability. The terms "consistent and auditable" have been added to replace "mechanistic and repeatable" in the Guideline. When paid their offer price, Market Participants will recover their costs if their forecasts are unbiased – meaning that they do not systematically over or under forecast run times and production. Section 3.1 of the Trading conduct guideline addresses the use of credible external information or forecasts.	Section 5.1 updated to add "consistent and auditable".
35	Synergy	Dynamic forecasts Example 16	Frequency of updating forecasts of market price. Example 16 suggests that offers and construction methodology should be reviewed and updated for any apparent forecasting biases.	Guidance around the timing of all forecasts, including fuel price forecasts used in the construction of offers. Provide clarity on the requirements example 16 intends to highlight. Are Market Participants expected to be updating their offers in real-time to account for variations	Market Participants may make their own judgements on when forecasts should be revised. The ERA expects Market Participants will address persistent profits in the Real-Time Market as quickly as they would revise persistent losses.	No change required.

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
				between dispatch expectations and actual dispatch outcomes?		
36	Alinta Energy	Disagree with the proposal that "persistent gains" over a period should be considered a breach of 2.16A.1, especially in the STEM.	Equating a breach with "persistent gains" could effectively require participants to increase their risk of over-forecasting to balance their instances of perceived under- and over-forecasting, regardless of these reasons. In the STEM, all customers may decide if, and at what price they buy. This means consistent premiums may be paid (and received) due to sellers and buyers' respective positions and risk profiles, and not due to forecasts. Baseload generators may consistently opt to secure a STEM price to avoid negative price risk.	Note that while a participant's offer history may be relevant when assessing compliance of forecasts, the primary consideration should be whether an offer was reasonable at the time it was made.	<p>'Persistent gains' will be calculated as if a Market Participant received its offer price (this accounts for the cases where the Market Participant is an inframarginal generator with the market price greater than its offer price – in which cases inframarginal profits gained would not be indicative of a biased forecast).</p> <p>Where a Market Participant sees persistent forecasting bias, it can remove the bias and would have no reason to incorporate previous profits of losses into future offers to even out returns.</p> <p>The ERA will consider the relevant circumstances of each suspected breach of the WEM Rules and will investigate in accordance with its Monitoring Protocol.<sup>19</sup></p> <p>In practice, forward contract markets (in which contracts are written well in advance of the spot prices being cleared and for a relatively long term) may show a risk premium. The financial risk from over/under forecasting prices in the STEM is negligible and hence the premium should be zero. The STEM clears one day in advance of the</p>	The definition and role of persistent gains is clarified in section 5.1 to note the relationship to the offer price (and section 8 for STEM submissions).

<sup>19</sup> Economic Regulation Authority, 2023, Monitoring Protocol WEM Procedure ([online](#)).

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
					Real-Time Market and gains/losses for under or over-forecasting prices for each Dispatch Interval is negligible.	
37	Synergy	Using assumptions that differ from AEMO's pre-dispatch schedules.	Market Participants may have different assumptions to AEMO, such as on the output levels of DER and intermittent generation.	Can Market Participants use assumptions in offers, where these differ from AEMO in relation to the forecast dispatch outputs?	Market Participants are free to use their own forecasts and assumptions based on what they consider the best available information and revise these when they consider circumstances have changed.	No change required.
38	Synergy Shell Energy AEC	Synergy, Shell Energy and the AEC disagree with the Guideline not including a risk margin.	Synergy disagrees that a Market Participant without market power would not include a risk margin.	Shell Energy suggests reintroducing a risk margin to ensure that Market Participants do not continually under-recover their costs.	A risk premium on capital invested is included in the Benchmark Reserve Capacity Price, which in part determines reserve capacity price. Consequently, the cost of capital for investing in capacity assets does not need to be recovered through STEM or Real-Time Markets.	No change required.
<b>9. Below-Cost and Above-cost offers [Section 5.2]</b>						
39	AEC Shell Energy Synergy	Below-cost offers. The minimum offer cap may not be sufficiently low enough for generators' ramp period opportunity cost.	Synergy note that Shell Energy note that generators ride through for a minimal number of negative-price intervals and remain online rather than being forced to shut down.	The AEC and Shell Energy suggest Market Participants be permitted to temporarily bid below cost for operational reasons.	Section 5.2 of the Guideline addresses below-cost offers. Example 11 in section 4.6.3 (Avoided Start-up and shut-down costs) is an example of a calculation for a particular generator, and does not set a lower limit.	Section 4.6.3 updated to clarify that Market Participants may consider other factors.
40	Synergy Shell Energy	Above-cost offers Below-cost offers section 5.2	Synergy suggests limited circumstances where it may be appropriate for a Market Participant to offer above or below costs, these include:	Shell Energy asks if it is reasonable for a generator to place maximum price offers for dispatch intervals where	A Market Participant may offer above cost when it does not have market power – that is, when it expects that it is highly unlikely to be able to influence market prices.	No change required.

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
			Avoiding infeasible dispatch; Allowing a facility to ramp on/off; Undertaking commissioning or prudent facility testing; and Facilitating in-merit upward ESS participation.	it does not believe there would be efficient cost recovery if the dispatch and pre-dispatch schedule included low forecast prices?	For facility testing or commissioning Market Participants must follow the WEM Rules. Unless exceptions are provided by the WEM Rules, Market Participants are to provide offers based on cost of supply and Market Participants must not offer above cost to facilitate their participation in the ESS market. The Guidelines explain how market participants may develop their offers into the FCESS markets.	
<b>10. Renewable Generators [section 6.4, 6.5, 6.5 and 6.7]</b>						
41	AEC Bright Energy Synergy	Large-scale Generation (LGC)  Power Purchase Agreement (PPA)	Synergy, AEC and Bright Energy request clarification on how PPA and LGC positions should be accommodated in offers from renewable generators as these opportunity costs could influence bidding strategies. Bright Energy noted that in the new WEM, green value might not always equal LGC value. In the market, bidding appears to be motivated by PPAs which value green credits at a greater price than the current LGC market. Bright Energy also noted that PPAs might have penalty mechanisms that oblige the generator to produce power	Synergy asks if renewable facilities may consider forecast LGC prices in future years as well as the current year in their offers. In relation to commercial pricing in a PPA, Bright Energy note that a generator must be able to set an offer to cover an average of their costs.	The market for LGCs is a transparent market against which the prevailing price of LGCs can be benchmarked. In the accompanying report for the draft Offer Construction Guideline the ERA addressed why PPA contract prices, or contract prices for LGCs – which are different from the market price – are irrelevant in forming offers. <sup>20</sup> If an entity values LGCs more than the LGC market price, for example due to a minimum generation clause in a PPA, they will offer electricity at a lower price (than the case they form their offers based on the market price of LGC), owing to a higher opportunity cost of not receiving a LGC. Valuation of renewable electricity at less than a LGC price is not rational behaviour for a profit maximising	Added comment in other opportunity costs regarding REC/LGC market in section 4.7 to include future LGC prices if applicable.

<sup>20</sup> Economic Regulation Authority, 2023, Offer construction guideline and trading conduct guideline, Draft report, pp. 8–9, ([online](#)).

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
			outside the cost-based offer proposed.		Market Participant, as the entity could always sell into the LGC market.	
42	Synergy	Large-scale Generation Certificate (LGC) Small-scale Technology Certificate (STC) Table 7	Guideline does not fully capture the complexities a renewable facility may face.	How to account for LGC and STC liability, incurred on ESR round trip losses? Are these valid variable costs that can be compliantly included in ESR offers?	Round-trip LGC and STC losses are a valid component of efficient variable costs for ESRs. These may be recouped	Cost of round trip LGC liability added to Table 9.
<b>11. Gas-fired Generators [section 6.1]</b>						
43	Synergy	Section 6.1, 2nd Paragraph	The likelihood of gas-fired generators incurring avoided start-up and shut-up costs will increase with the start of the new market and with the increased penetration of renewables, DER and ESR facilities in the WEM.	The following statement may need revision as the market continues to evolve: "Avoided start-up and shut-down costs may be incurred by gas-fired generators but are not common."	Suggestion noted and changes made.	Section 6.1 updated to remove text on the frequency of these costs.
<b>12. Coal-fired Generators [section 6.2]</b>						
44	AEC	Ramping cost	Ramping costs are included for gas-fired generators as an avoidable fixed cost, however there is no provision for ramping costs for coal-fired generators.	The AEC suggests the ERA clarifies how coal-fired generators claim ramping costs and suggests that ramping costs be included in Table 5.	Costs of coal-fired generators ramping from zero to required production at the start of a Dispatch Interval have been reclassified as enablement costs.	Enablement costs clarified. Section 4.6.2 updated to replace 'ramping costs' with 'enablement costs.'
45	Synergy	Coal-fired generators and their startup costs.	The assumption of very long dispatch periods for coal facilities is and will increasingly become invalid.	Suggests the following statement is revised: "Start-up and shut-down costs are incurred by coal-fired generators, but	Noted	Amendment to clarify the quoted sentence in section 6.2.

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
				such generators tend to run for very long periods, so these costs are insignificant when allocated across each dispatch cycle."		
<b>13. Frequency Co-Optimised Essential System Services (FCESS) [section 7]</b>						
46	Synergy	Avoidable fixed costs. Effective cost allocation. Causer-pays approach.	Allocating some Avoidable Fixed Costs (such as Start-up Costs) to offers in the ESS market without including these costs in Real-Time market offers, may be more appropriate if the facility is required to dispatch solely for ESS purposes.	Provide further guidance on construction of offers across energy and ESS markets. In terms of effective cost allocation and causer pays approach to cost recovery within the market, a more appropriate offer would be if the facility, and ensures that start-up costs are borne by the users who caused the ESS requirement.	Where a plant is started to provide FCESS only, then it may allocate that startup cost to FCESS offers. However, when a plant is already started for energy provision, startup cost is to be included for energy service offers only. However, an FCESS offer can allow for allocation of start-up costs over lower energy production should Market Participants' capacity be reserved for an upwards FCESS service.	Role of start-up costs in FCESS offers clarified in section 7.
47	Alinta Energy	Recovering forgone FCESS energy revenue	Facilities that will be required to offer FCESS capacity for the first six months of market start should be permitted to recover forgone energy revenue.	The facility will incur a cost equal to the difference between its standing enablement maximum and maximum volume that would have otherwise cleared for energy, multiplied by the energy price. Recommend that participants be permitted to recover this cost in the Real-Time Market.	FCESS is designed to compensate Market Participants for forgone Real-Time-Market revenue when capacity is reserved for FCESS provision.	Added clarifying text in example 21 and section 7. The FCESS market is designed to compensate Market Participants for foregone energy revenue.

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
<b>14. Record Keeping [section 10]</b>						
48	AEC Shell Energy Synergy	Specific issue with "These records include, but are not limited to:"	Shell Energy, AEC and Synergy are concerned with list of required records being unspecified, excessive and the regulatory burden/cost of these obligations. It is unclear what information is expected to be kept in these records.	<p>The AEC recommends that the ERA apply a more practical standard of records. A reasonable indication of how an offer was calculated, based on reasonable ranges of each offer component. Participants should not be required to document exactly how each offer component was calculated and amortised for each re-bid.</p> <p>Shell Energy suggests striking a balance between regulatory oversight and practicality, whilst ensuring the framework promotes transparency and accountability.</p> <p>Synergy request that the existing list of records to be reviewed to confirm their relevance to the objective test in WEM Rule 2.16A.1.</p>	<p>Market Participants are expected to keep records which demonstrate how Market Submissions are developed. Market Participants are not required to store the information related to how each offer is formed but keep records that allow offers to be replicated in future, for example to assist the ERA to replicate the Market Participant's offers. Energy Policy WA noted that Market Participants large enough to be able to exercise market power should already have all necessary systems and process to comply with their record keeping obligations.<sup>21</sup></p> <p>Section 10 of the Guideline is not an exhaustive list and records included in the section may not be relevant for certain generators. A Market Participant can use its own judgement to determine the information, relevant to its own operations, to retain to comply with WEM Rule 2.16A.1</p>	Addition to section 10.2 to clarify that records are to allow for offers to be replicated.

<sup>21</sup> Government of Western Australia, Energy Policy WA, Response to Stakeholder Submissions, 3 April 2023, p. 1. ([online](#)).

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
<b>15. Other Issues</b>						
49	AEC AGL Shell Energy Synergy	Amnesty/ Transition Period	Market Participants require time to update internal systems to comply with the two new Guidelines. AGL states that adequate testing has not been done. Shell Energy mentioned that a transition period will help Market Participants adjust to the new requirements, ensure continued compliance with the general trading obligations in the WEM Rules and implement new internal processes and systems.	Synergy suggests an amnesty period of at least 90 days	There is no such amnesty period allowed in the WEM Rules. The ERA must investigate in accordance with an assigned risk rating and whether a matter is a breach will be determined based on the evidence available. The ERA will always consider the relevant circumstances applicable to each confirmed breach when determining the appropriate compliance response. During consultation on the WEM Rules, Energy Policy WA noted that an amnesty period is not necessary, and expressed concern with the potential impact an amnesty period could have on the effectiveness and efficiency of the new WEM. <sup>22</sup>	Section 1.2 'Monitoring' added to note that the ERA will consider each matter by having regard to the applicable individual circumstances.
50	AEC	Depreciation	Start-up Costs are not applicable for wind and solar generators or Electric Storage Resources.	Clarify how depreciation costs are recovered in offers from wind and solar assets.	Tables 7 and 8 note that start-up costs are inappropriate for wind and solar generators and ESRs. Depreciation costs caused by operation are recovered through VOM costs. Cycling costs for battery storage facilities can be accounted for when forming price offers, where appropriate.	Updated sections 6.4 and 6.5.
51	Bright Energy	Recovery of Capex on lower capacity factors	The SWIS Demand Assessment notes that more renewable energy is to be constructed and the capacity factors would be lower for the generators.	Request that the Rules make clear that the Capacity Credit mechanism will reward generators sufficiently to	This comment is related to the market design. The ERA's Guideline is consistent with the WEM Rules requirements.	No change required.

<sup>22</sup> Government of Western Australia, Energy Policy WA, Response to Stakeholder Submissions, 3 April 2023, pp. 16-17. ([online](#)).



#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
				compensate for the lower return on capital without the need for the market to set a price level which will provide sufficient rewards in certain intervals.		
52	Bright Energy	Generator primarily serving behind the meter client	As more generation becomes commercial, participants may use cost calculations driven by commercial reasoning unrelated to market power manipulation.		Bright energy does not provide an example of behind-the-meter generation spilling into the WEM, or whether any such generator would have market power. As new circumstances emerge the ERA will consider if amending the Guideline is necessary.	No change required.
53	Synergy	Limit of a Market Participant's discretion	Market Participant has discretion on the inputs and methods for formulating compliant offers, but the boundary of this discretion is unclear.	Provide examples of compliant conduct and clarify the limitations, preconditions or consequences of a Market Participant exercising discretion. Alternatively, the Guideline should note that the discretion is very broad.	The Guideline provides principles for Market Participants to follow and examples of behaviour that is and is not compliant with the principles. The Guideline would constrain Market Participants if it specified every possible circumstance.	No change required.
54	Synergy	Offers accounting facility obligations or operational limits	How to balance competing mandatory obligations that may apply to a facility, for example a facility may have a mandated emissions threshold.	Provide guidance on constructing compliant offers that account for other facility-specific obligations or operational limits.	As new circumstances emerge – such as the hypothetical example provided by Synergy - the ERA will consider if amending the Guideline is necessary. The emission thresholds proposed by Energy Policy WA relate to the certification of reserve capacity and if	No change required.

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
					implemented, do not affect price offers into the STEM or Real-Time Market. If such thresholds exist - for example fuel supply limitations - Market Participants can account for such constraints in advance of nearing the threshold by forming reasonable forecasts of fuel use and limitations in the coming periods.	
55	Shell Energy Synergy	Below-cost offers addressed in the Trading Conduct Guideline and Offer Construction Guideline.	Shell Energy notes that the treatment of below-cost offers in both Guidelines fail to consider generator's operational reasons for dispatch. Flexibility is required for temporary bidding below cost. Synergy is concerned that the Guidelines provide no clarity or guidance to Market Participants on what circumstances the ERA may consider a below or above cost offer to be permissible within WEM Rules.	Synergy asks for a published list of the reasons for below-cost offers, and documentation required of Market Participants, especially where the need for a below-cost offer arises in real time.	Section 5 of the Offer Construction Guideline states that offering electricity below cost is acceptable unless such offers breach WEM Rule 2.16A.3. Example 6 in the Trading Conduct Guideline shows a below-cost offer in the Real-Time Market for energy being used to manipulate a FCESS market.	No change required.
56	AEC Shell Energy	Review of Offer Construction Guideline	The AEC suggest that Market Participants provide input on all of the cost components that should be included in the guideline as the market evolves, the generation mix changes, revenue adequacy fluctuates, and the market power mitigation framework progresses.	Shell Energy requests the Guideline be regularly reviewed and opened to consultation.	The ERA may amend the Guideline when it considers necessary, this includes when there are changes in the regulatory framework, or related court or tribunal decisions. For example, the ERA may choose to update the Guideline after responding to a request for guidance from a Market Participant. When considering the need for amendment to the Guideline, the ERA will take into account the views of	No change required

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
					Market Participants and other WEM stakeholders. WEM Rule 2.16D3 requires the ERA to consult on amendments to the Guideline.	
57	Synergy	Review of costs and revenue allowed in the WEM	Recovery of all efficient costs and incentives for new investments.	Synergy recommends a thorough review of the costs and revenues allowed in the WEM.	The Guideline is consistent with the requirements of the WEM Rules in allowing for all efficient variable costs related to STEM and Real-Time Market services to be recovered.	No changes required.
<b>16. Typographical</b>						
58	Synergy	Section 4.4, Equation 8		Suggest that the number 210,240 at the top of the summation sign should instead be 105,120 (=8760 x 12). In addition, it is suggested that the “,” in the number is excluded from the equation as it initially appears as though t is to be summed over two factors (1 to 210, and also 1 to 240).	Noted	Corrections made in section 4.4, Equation 8.
59	Synergy		A Market Participant may still incur losses if their facility is not dispatched or discharged.	Suggest that the drafting in the paragraph is amended to refer to “operating” losses and “operating” costs.	Noted	Section 4.1 updated to add “operating”.

**Table 4: ERA response to stakeholder issues – Trading conduct guideline**

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
<b>1. Transition/Amnesty Period</b>						
1	AEC Shell Energy	Transition period	Concern that participants will not have adequate time after the two new Guidelines are published to update internal systems prior to new market start.	That the ERA apply flexibility or an amnesty period after the start of the new WEM.	There is no such amnesty period allowed in the WEM Rules. The ERA will always consider the relevant circumstances applicable to each confirmed breach when determining the appropriate compliance response to that breach. During consultation on the WEM Rules, Energy Policy WA noted that an amnesty period is not necessary, and expressed concern with the potential impact an amnesty period could have on the effectiveness and efficiency of the new WEM. <sup>23</sup>	Section 2.3 amended to provide further clarity on the ERA's approach to monitoring, investigation and compliance.
<b>2. STEM Submissions [section 2.1]</b>						
2	Synergy		Clarification of how the ERA will monitor compliance with WEM Rule 2.16A.3 in the STEM.	Will the assessment be based on the valid binding effective submission at close of STEM submission window?	The submission at the close of STEM submission window will also be considered.	Text updated in section 2.1.
<b>3. False, misleading or deceptive [section 3.1]</b>						
3	AGL	Externally sourced information	The Guideline does not consider that in some cases a submission will be based on externally provided information. In the case where incorrect actions by	A Market Participant's action should be considered in light of the information they were provided, not just	A Market Participant can rely on credible external forecasts and information to make its offers. Market Participants will not be in breach for making operational decisions based on credible	Text added to section 3.1 regarding use of credible external information or forecasts.

<sup>23</sup> Government of Western Australia, Energy Policy WA, *Response to Stakeholder Submissions*, 3 April 2023, pp. 16-17. ([online](#)).

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
			the Participant 'misled' the market, the Guidelines state that '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)'.	the outcome of their actions.	external information if this information turns out to be incorrect, for example a weather forecast. Market Participants should maintain records of the original forecast and source. A Market Participant may breach WEM Rule 2.16A.3(a) for conduct that is false, misleading or deceptive, or likely to mislead or deceive, regardless of the participant's intent.	
4	AEC Synergy	Example 1: Timing of generator outage	Example 1 creates confusion and may inadvertently capture most portfolio owners. Synergy notes that the example appears to suggest that a Market Participant could be required to continue to offer and dispatch a facility that requires maintenance up until the fault occurs.	AEC requests the example be clarified to confirm that bad faith does not extend to: a) 'knowing' that prices could be higher with less generation. Or b) a genuine fault occurring at one plant potentially increasing revenue at other plants.	A Market Participant may send a generator on outage for genuine operational or essential maintenance reasons. Example 1 shows a period of known unavailability. A Market Participant should continue to offer up to the unavailable period and declare its unavailable capacity as soon as possible. Market Participants may shut a generator down and declare it unavailable if it considers there is a high chance of a fault occurring and during any maintenance required due to mitigate the risk of fault.	Example 1 has been updated to note that the outage is due to a reason unrelated to a genuine outage (section 3.1).
5	TransAlta	Taking advantage of higher prices vs. causing higher prices	The Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019 (paragraphs 2.95 and 2.96) distinguishes between behaviour that takes advantage of higher	Guidance on how the ERA would assess and distinguish between behaviour that seeks to take advantage of higher prices and	WEM Rule 2.16A.3 concerns conduct that has the purpose or has, or is likely to have the <b>effect</b> of distorting prices. This differs from the Commonwealth legislation which requires an	No change required.

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
			prices and behaviour that seeks to cause higher prices.	behaviour that seeks to cause higher prices.	element of intent for the behaviour that distorts prices. <sup>24</sup>	
<b>4. Fraudulent, dishonest or in bad faith [section 3.2]</b>						
6	Synergy	Example 3: Rebidding for real time outage	Will Market Participants be required to rebid within less than five minutes after becoming aware of an outage?		Market Participants should act as soon as practical after the outage occurs.	Example 3 updated to replace "immediately" with "as soon as practical".
<b>5. Distorting or manipulating prices [section 3.3]</b>						
7	AEC Synergy	Below cost offers addressed in the Trading Conduct Guideline and Offer Construction Guideline.	AEC is concerned that the minimum offer cap may not be sufficiently low enough for generators ramp period opportunity cost. Synergy notes that Example 6 does not provide any meaningful information to Market Participants.	AEC and Shell Energy request flexibility on temporarily bidding below cost. Synergy suggest Example 6 be amended to show circumstances where a below cost offer is and is not acceptable, and to state the energy clearing price rather than this being an inferred outcome.	Section 5 of the Offer Construction Guideline states that offering electricity below cost is acceptable unless such offers breach WEM Rule 2.16A.3. Example 6 in the Trading Conduct Guideline shows a below cost offer in the Real-Time Market for energy being used to manipulate a FCESS market.	Text added to example 6 to refer to the Offer Construction Guideline and note that the prohibited conduct described in the example affects FCESS markets.
8	Shell Energy	Example 7: Withholding capacity for the purpose of distorting FCESS prices	Example 7 seems to conflict with competitive market principles that allow participants from optimising resources, within the WEM Rules.	Revise to recognise that FCESS participation is optional and that reductions in FCESS volume may be to optimise the asset, as well as for physical reasons such as derates/outages.	FCESS is not a compulsory participation market. However, Market Participants should offer the FCESS services in a manner as a Market Participant without market power would. The FCESS markets are designed so that a Market Participant could provide its maximum amount of	No change to example 7 required.

<sup>24</sup> Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019, Paragraph 2.85 Second element – purpose of behaviour ([online](#)).

#	Raised by	Issues	Description	Suggestion	ERA's response	Change made
					FCESS services and be no worse off than had it been dispatch solely for energy. So participation in FCESS markets and offers based on cost of supply do not compromise the efficient deployment of generation resources between markets.	
<b>6. Urgent Maintenance</b>						
9	Alinta Energy	Similarity of WEM Rule 2.16A.3 to Part XICA <i>Competition and Consumer Act 2010</i>	Clarifying that a participant that withdraws capacity to conduct emergency maintenance and causes high prices, is not breaching its obligations.	Add an example like #25 in the ACCC Guidelines <sup>25</sup> and note that urgent maintenance may minimise risks to system security, equipment, safety or market outcomes.	The requirements of WEM Rule 2.16A.3 differ from Part XICA of the <i>Competition and Consumer Act 2010</i> (Cwlth). Example 3 demonstrates the principle required by WEM Rule 2.16A.3.	To provide further clarity, example 3 has been updated to include the trader becoming aware of urgent maintenance.
<b>7. Dispatch Instructions</b>						
10	Alinta Energy		Market Participants may need to ignore Dispatch Instructions in the new WEM to avoid damage to equipment.	Clarify if not following a dispatch instruction due to potential damage to equipment would breach WEM Rule 2.16A.3.	The ERA will consider the relevant circumstances of each potential breach of the WEM Rules and will investigate in accordance with its Monitoring Protocol. <sup>26</sup>	No change required.

<sup>25</sup> ACCC, *Guidelines on Part XICA: Prohibited conduct in the energy market* May 2020, pp. 29-30, ([online](#)).

<sup>26</sup> Economic Regulation Authority, 2023, Monitoring Protocol WEM Procedure ([online](#)).