



Economic Regulation Authority

Compliance Framework and Strategy

Wholesale Electricity Market Rules

Gas Services Information Rules

Pilbara Networks Rules

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1. Introduction

The Economic Regulation Authority (ERA) is the independent economic regulator for Western Australia. Our role is to regulate the gas, electricity and rail industries, and license providers of gas, electricity, and water services.

Through our monitoring, compliance, and enforcement work, we aim to provide businesses and consumers with confidence that utilities markets operate efficiently and effectively. We also aim to work productively with Participants to ensure confidence in their engagement with the ERA and that their views are considered.¹

We also welcome Participant-initiated discussions and enquiries on compliance matters.

The contact details for the ERA for compliance and enforcement functions under the Rules specified in Section 2 of this document are:

Compliance and Enforcement, Energy Markets

Email: market.compliance@erawa.com.au

Post: PO Box 8469, PERTH BC WA 6849

¹ Participants refers to a Rule Participant as defined in the WEM Rules, a Gas Market Participant as defined in the GSI Rules and a Rules Participant as defined in the Pilbara Networks Rules.

2. Purpose and scope

This document sets out how we approach our compliance functions in monitoring, investigating and enforcing compliance under the:

- Wholesale Electricity Market (WEM) Rules and Procedures
- Gas Services Information (GSI) Rules
- Pilbara Networks Rules (PNR).

2.1 WEM Rules scope and objectives

The WEM Rules govern the market and the operation of the South West interconnected system (SWIS), including the wholesale sale and purchase of electricity.

The WEM seeks to benefit consumers in the SWIS by:

- minimising the long-term cost of electricity supply
- promoting the safe and reliable production and supply of electricity.

2.2 GSI Rules scope and objectives

The GSI Rules govern the provision of information by Gas Market Participants to the Australian Energy Market Operator (AEMO), including the type of information required, how information is submitted and the frequency of submissions. The information provided under the GSI Rules is published on the WA Gas Bulletin Board (GBB) which is a public website providing forecast and historical data on the domestic production, transmission, storage and usage of natural gas in Western Australia. The GBB was established in 2013 under the GSI Rules and is operated and maintained by AEMO.

The GSI seeks to benefit consumers by:

- Promoting a safe and reliable supply of natural gas in Western Australia.
- Encouraging the efficient operation and use of natural gas services in Western Australia.

2.3 Pilbara Networks Rules

The Pilbara Networks Rules (PNR) establish rules for the operation, management, security and reliability of Pilbara networks and the functions of the Pilbara independent system operator (ISO).

The ISO has the primary responsibility for monitoring Participant compliance and investigating suspected breaches of the Pilbara Networks Rules, however the ERA has the responsibility for investigating suspected breaches of the Pilbara Networks Rules by the ISO.^{2,3}

² Rule 307(1) of the Pilbara Networks Rules states the ISO must monitor Rule Participant's behaviour for compliance and rule 317(1) requires the ERA to provide assistance to the ISO if reasonably requested.

³ Rule 313(3) of the Pilbara Networks Rules states the ERA must investigate suspected breaches by the ISO referred to it unless the matter is considered to be frivolous, vexatious or not made in good faith.

2.4 Other ERA compliance functions

We also have other compliance functions which are not within the scope of this document (for example, electricity, gas, and water industry licensee compliance). Further information on these functions can be found on the [ERA website](#).

3. Compliance approach

We will work with Participants to enable them to achieve high levels of compliance. Under this approach we will:

- Assist Participants to understand their obligations, noting that the responsibility for meeting compliance obligations rests with the individual Participant.
- Identify potential breaches, investigate these and identify any subsequent education or other prevention or enforcement actions required.
- Ensure the investigation process is conducted in an efficient and professional manner, including applying procedural fairness and ensuring investigation decisions are informed by the relevant facts.
- Ensure that our compliance responses to breaches are proportionate to the circumstances of the non-compliant behaviour.
- Apply a risk-based approach to our compliance activities, including our monitoring processes, investigation processes and enforcement actions.
- Where relevant, publish investigations and outcomes on our website to improve accountability, transparency and Participant understanding.⁴

3.1 Risk-based approach

The risk based approach that we have adopted for our compliance activities enables us to prioritise our compliance activities to maximise our effectiveness as a regulator. This means that we will consider the consequence and/or likelihood of non-compliance when determining:

- Planning of compliance activities, including the mix of education, monitoring and investigation activities that we may carry out.
- The rule obligations that we will prioritise for compliance monitoring.
- The priority of investigations to be undertaken.⁵
- The enforcement actions that are appropriate in response to the non-compliance.

Generally, we will prioritise higher risk obligations over lower risk obligations. However, there may be circumstances where lower risk obligations will warrant further compliance investigation (for example, repeated low risk non-compliances by the same Participant may indicate a systemic issue).

⁴ The WEM Rules requires the ERA to keep a public register of breaches (Clause 2.13.49) and investigations (Clause 2.13.49A).

⁵ The WEM Rules require the ERA to investigate suspected breaches in accordance with the risk rating assigned to a suspected breach of the WEM Rules or WEM procedures (Clause 2.13.27). The GSI Rules require the ERA to investigate all suspected breaches of the GSI Rules (Rule 168(2)) reported to it. The Pilbara Networks Rules require the ERA to investigate all suspected breaches by the ISO referred to it (Rule 313(3)).

4. Compliance activities

We detect and deter non-compliance by encouraging high levels of Participant compliance. To achieve this, we engage in compliance activities that, although described separately below, are inter-related processes.

4.1 Monitoring

Our monitoring activities are intended to identify potential non-compliance matters that may require further investigation before determining if a breach has occurred.

It is through these activities that we will generally first become aware of potential non-compliances. Participants' awareness of our monitoring activities also serves as an important deterrent mechanism.

Our monitoring activities are designed such that:

- There is early detection of non-compliance.
- The activities focus on high-risk issues and also appropriately deal with low level non-compliances.
- They are unbiased and capture all Participants.
- There is a range of sources that feeds these activities.
- The activities are carried out with minimal regulatory burden on Participants.

We will monitor Participants' compliance using various methods, including but not limited to:

- Intelligence: Assessing information received from stakeholders that may identify matters requiring further investigation.
- Monitoring: Analysing information, data and documents, including that provided by AEMO which may identify potential areas of non-compliance.
- Targeted compliance activities: Undertaking targeted reviews of Participants to assess compliance with specific Rule obligations or groups of obligations, or areas identified as being of particular compliance concern, or where monitoring is required because Rules provide for special arrangements.

We will generally become aware of a non-compliance through the monitoring processes referred to above. This includes breach reporting arrangements in place with AEMO. WEM Rule Participants are also required to self-report their own suspected breaches of WEM Rules or WEM Procedures that they become aware of.⁶

Under both the WEM and GSI Rules, AEMO is required to support the ERA with its compliance monitoring functions. AEMO and the ERA have an established process for this, including the provision of reports from AEMO and regular compliance meetings with AEMO.

⁶ Clause 2.13.23 of the WEM Rules requires WEM Rule Participants who are aware that they have breached or have reasonable cause to suspect they may have breached, the WEM Rules or a WEM Procedure, must notify the ERA in writing.

4.2 Investigations

When we become aware of a suspected breach of the relevant Rules, unless the Rules require us to investigate, we will risk rate the suspected breach to determine if an allegation should be investigated and the priority of the investigation.⁷ Allegations with higher risk ratings will be prioritised for investigation over allegations with lower risk ratings.

The matters investigated usually have consequences for operations, material financial implications or impact the security and reliability of the power or gas distribution systems.

Our investigation powers are specified in the WEM Rules, GSI Rules, Pilbara Networks Rules, the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* and the *Gas Services Information Regulations 2012*. We also have powers available under the *Economic Regulation Authority Act 2003* to issue notices requiring the provision of information.

Section 5 of our Monitoring Protocol WEM Procedure sets out the details of our investigation process. While the Monitoring Protocol WEM Procedure is developed under the WEM Rules, the investigation process is equally applicable to investigations carried out under the other Rules specified in Section 2 of this document; apart from WEM specific processes such as investigation suspension and closure.

The key principles guiding our investigations process are:

- **Compliance:** Investigations are carried out pursuant to the relevant powers and requirements in the WEM Rules, GSI Rules, Pilbara Networks Rules, Regulations, and the ERA Act, including respecting the confidentiality provisions within these instruments.
- **Fairness:** The investigation process is conducted in a professional manner, including applying procedural fairness and ensuring investigation decisions are informed by the relevant facts.
- **Consistency:** Investigation processes are consistently applied and result in outcomes that are consistent and proportionate to the circumstances of the non-compliant behaviour. The investigation decision-making process is subject to rigorous governance.
- **Timeliness:** Investigations are conducted in an efficient manner, ensuring matters are dealt with in a timely manner appropriate to the circumstances of the suspected non-compliance.
- **Transparency:** Potential compliance outcomes are transparent to all Participants so that they have a reasonable degree of certainty about the consequences of non-compliance.

4.3 Enforcement

We have statutory compliance responses available to us under the various Rules specified in Section 2 of this document, as well as administrative responses, such as providing education advice and seeking voluntary compliance programs.

Figure 1 below shows the compliance responses available to us and how we may apply them based on assessed risk. This is a guide only – each matter investigated will be considered on a case-by-case basis having regard to the individual circumstances and Rules applicable to

⁷ The WEM Rules require the ERA to investigate suspected breaches in accordance with the risk rating assigned to a suspected breach of the WEM Rules or WEM procedures (clause 2.13.27). The GSI Rules require the ERA to investigate all suspected breaches of the GSI Rules (Rule 168(2)). The Pilbara Networks Rules require the ERA to investigate all suspected breaches by the ISO referred to it (Rule (313(3)))

that matter. Our strategy is to ensure that enforcement outcomes are unbiased, fair, consistent and proportionate to the circumstances of the non-compliant behaviour.

Figure 1: Compliance Responses



*Only applicable where permitted by the relevant Rules and/or Regulations

4.4 Compliance advice and participant liaison

We recognise Participants' desire to be active and engaged in the markets we regulate, and we will work productively with Participants to ensure we are transparent, unbiased and inclusive in our communications and that Participants' views are considered.

We provide information to Participants to assist them in fulfilling their compliance obligations. This includes meeting with Participants as part of monitoring and investigation activities, publishing guidelines, and holding forums. Compliance information is also available on the [ERA's website](#). Each Participant remains responsible for meeting its compliance obligations under the various Rules.

The ERA welcomes participant-initiated discussions and enquiries on compliance matters.

5. Compliance and Enforcement Priorities

Our risk-based approach to setting compliance and monitoring activities involves assessing the compliance risk associated with an obligation or set of obligations. These assessments will assist us in determining what areas will be prioritised for compliance monitoring.

We prioritise our compliance and enforcement monitoring activities into three categories:

- **Mandatory:** Areas the Rules mandate that we must monitor.⁸
- **Risk-based:** Areas we have identified as requiring monitoring based on our risk assessment process.
- **Trend-based:** Areas we have decided to prioritise for monitoring based on our observations.

We will determine and review compliance and enforcement monitoring priorities as required. Our processes are flexible to respond to emerging trends and issues, changes in rules and regulations and issues that require timely compliance attention. Any changes to the monitoring priorities will be updated on the [ERA's website](#) as required.

5.1 Progress reports on compliance activities

We publish compliance reports on the ERA website every six months giving updates on the compliance activities for the preceding six months, as well as Electricity Review Board matters. These reports include suspected breaches reported to us, outcomes of breach investigations and the results of our compliance processes.⁹

Although the six monthly reports combine our reporting obligations under the WEM and GSI Rules, any compliance activities undertaken for the Pilbara Networks Rules will also be included as they occur.

⁸ Certain activities must be monitored or investigated according to the relevant Rules. For example, under the WEM Rules the ERA must monitor for inappropriate and anomalous market behaviour, including behaviour related to market power (clause 2.16.9(b) of the WEM Rules).

⁹ To access the six monthly reports please follow this link: <https://www.erawa.com.au/electricity/wholesale-electricity-market/compliance-reports/market-rules-compliance-reports>.