



Economic Regulation Authority

# A Procedure Change Proposal: Portfolio Determination

(EEPC\_2024\_03)

13 September 2024

## **Economic Regulation Authority**

Level 4, Albert Facey House

469 Wellington Street, Perth WA 6000

**Telephone** 08 6557 7900

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

**Website** [www.erawa.com.au](http://www.erawa.com.au)

This document can also be made available in alternative formats on request.

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## Invitation to make submissions

**Submissions are due by 4:00PM WST, 14 October 2024**

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

We would prefer to receive your [Procedure Change Submission](#) via our online submission form <https://www.erawa.com.au/consultation>. A copy of the submission form is provided in **Error! Reference source not found.** also.

You can also submit your [Procedure Change Submission](#) through:

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

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

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

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

For further information please contact

### General Enquiries

Bruce Layman  
Ph: 08 6557 7913  
[info@erawa.com.au](mailto:info@erawa.com.au)

### Media Enquiries

Ph: +61 428 859 826  
[media@erawa.com.au](mailto:media@erawa.com.au)

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# 1. Introduction

In the Wholesale Electricity Market (WEM), the ERA has a role to conduct regular portfolio assessments, which consider the registration, ownership and operational control of generating facilities.

This procedure change proposal is published as part of the ERA's review of the *WEM Procedure: Portfolio Determination* and proposes the ERA's amendments for consultation.<sup>1</sup>

To conduct its review of the WEM Procedure, the ERA must:

- Ensure the WEM Procedure is consistent with the WEM Objectives, WEM Rules, the *Electricity Industry Act 2004* and *Electricity Industry (Wholesale Electricity Market) Regulations 2004*.<sup>2</sup>
- Follow the procedure change process outlined in the WEM Rules and the relevant WEM Procedure.<sup>3,4</sup>

These obligations are summarised in section 1.1.

This paper is organised as follows:

- Chapter 1 summarises the current WEM Procedure, changes in the WEM design and the procedure change process.
- Chapter 2 outlines proposed changes to the WEM Procedure and the ERA's reasons for change. The draft WEM Procedure is provided in tracked changes in Appendix 1.

All capitalised terms in this document are defined terms under the WEM Rules.

On 8 August Energy Policy WA (EPWA) published the Exposure Draft for amending WEM Rules under FCESS Cost Review (Exposure Draft). EPWA's proposed amendments in the Exposure Draft are intended to be implemented on 20 November 2024 and require the ERA to amend its Portfolio Determination WEM Procedure to ensure consistency with EPWA's proposed amendments.<sup>5</sup>

The ERA is seeking stakeholder feedback on the amendments proposed in this paper, including the draft WEM Procedure provided in Appendix 2 and Appendix 3. The ERA will consider this feedback when developing the procedure change report and updated WEM Procedure, which will take effect on a date specified by the ERA.

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<sup>1</sup> To amend a WEM Procedure, the ERA must publish a procedure change proposal which includes the proposed replacement of the WEM Procedure and the reasons for the replacement. Wholesale Electricity Market Rules (WA), 27 July 2024, Rule 2.10.6, ([online](#)).

<sup>2</sup> Wholesale Electricity Market Rules (WA), 27 July 2024, Rule 2.9.3(a), ([online](#)).

<sup>3</sup> Ibid, Rule 2.10.

<sup>4</sup> Energy Policy WA, 2021, WEM Procedure: Procedure Administration, ([online](#)). EPWA is currently reviewing this WEM Procedure

<sup>5</sup> Energy Policy WA, *Exposure Draft to Amending the WEM Rules (FCESS Cost Review)*, 2024 ([online](#)).

## 1.1 The procedure change process

The ERA must publish a procedure change proposal that includes the proposed amended draft for the WEM Procedure and the reasons for those amendments.<sup>6,7</sup> Any person can make a submission to the ERA using the form provided in **Error! Reference source not found.**<sup>8</sup>

The ERA may seek advice from the Market Advisory Committee (MAC) when conducting this review.<sup>9</sup> The MAC may provide feedback to the ERA through meetings or by delegating its role to a working group of rule participants and other stakeholders.<sup>10</sup>

After considering stakeholder feedback on its proposal, the ERA will publish a procedure change report that outlines:

- The wording of amendments to the WEM Procedure and the reasons for the amendments.
- All submissions received before the due date for submissions, a summary of these submissions, and the response of the ERA to the issues raised in those submission.
- A summary of the views expressed by the MAC or, if the MAC has delegated its role to consider the procedure change proposal to a working group, a summary of the views expressed by that working group.
- A proposed date and time for the amendments to commence, which must, in the ERA's opinion, allow enough time after the date of publication of the procedure change report for rule participants to implement the changes required.<sup>11</sup>

## 1.2 Changes to the WEM Rules

EPWA has published draft WEM Rules for consultation. These proposed rule changes affect the existing WEM Procedure Portfolio Determination document.

EPWA has identified several areas for change within the document. These include:

- Changes to Portfolio Assessment processes including amending definitions, timeframes and reporting requirements.
- Replacing the Market Power Test with a Materiality Test.
- More targeted record keeping requirements.
- Changes to the way in which the ERA must provide guidance to market participants on certain matters.

Each of these proposed changes are discussed in more detail in the next section, as are the way the ERA proposes to amend the Portfolio Determination Procedure.

<sup>6</sup> Wholesale Electricity Market Rules (WA), 1 April 2024, Rule 2.10.13, ([online](#)).

<sup>7</sup> The consultation period must be at least 20 business days. The ERA can extend the consultation period at its discretion by publishing a notice of extension. Wholesale Electricity Market Rules (WA), 1 April 2024, Rules 2.10.17 and 2.10.18, ([online](#)).

<sup>8</sup> Wholesale Electricity Market Rules (WA), 1 April 2024, Rule 2.10.7, ([online](#)).

<sup>9</sup> Ibid, Rule 2.10.9.

<sup>10</sup> Ibid, Rule 2.3.17.

<sup>11</sup> Wholesale Electricity Market Rules (WA), 1 April 2024, Rules 2.10.10 and 2.10.12B, ([online](#)).

## 2. Proposed amendments to the WEM Procedure

### 2.1 EPWA's proposed changes

As discussed in section 1.2 of this report, EPWA is proposing a suite of changes to the existing WEM Rules.

These include:

- Consideration of a more general definition of “wholly or partly owned” to allow for a broader application of portfolio assessment:
  - EPWA's Exposure Draft notes that the current WEM principles, including the definition of associated entities, have failed to achieve the desired outcomes indicated in the Market Power Mitigation Strategy: Information Paper.<sup>12</sup>
  - This is largely because the *Corporations Act 2001 (Cwlth)* applies a very specific meaning to the term associated entities in the context of corporate structure. This definition might not be appropriate in energy markets.<sup>13</sup>
- A reduction in the frequency of portfolio assessments from twice yearly to once a year unless the facility is new or there has been a change in ownership.
- An additional clause that requires Market Participants to provide declarations within a specified timeframe.
- Replacing the current Market Power Test with a new Materiality Test:
  - This is consistent with the removal of the requirement of market power for violation of WEM Rule 2.16C.5.
- An additional clause to create a rule requirement for market participants to provide declarations within a specified timeframe.

### 2.2 Proposed changes to the WEM Procedure

In response to EPWA's proposed changes to the Portfolio Determination in the WEM, the ERA proposes to make the following changes to the WEM Procedure. For the most part, these changes are administrative and require little more than updates in terminology, dates and definitions.

Changes include:

- Changes to the definitions related to registered facilities ownership and control (Section 3.1)
- Removal of all reference to twice yearly portfolio determinations, updating the procedure to only refer to annual assessments to take place on 1 October (Section 3.1/Appendix 2).

<sup>12</sup> WA Department of Mines, Industry Regulation and Safety, Energy Policy WA, 10 November 2022, [online](#).

<sup>13</sup> Corporations Act 2001 ([online](#)).

- Updated references to the first portfolio determination completed after the new WEM market commenced on 1 October 2023 (Section 3.1).
- Updated requirements concerning timing of declarations (Section 3.1.15).
- Changes to timing for the ERA to identify constrained portfolios (Section 3.2).
- Replacement of all references to Market Power Test with Materiality Test (Section 4).
- Changes to the definition of Rolling Test Window (Section 4.2).
- Clarification for market participants concerning information recording (Section 5)
- Clarification of how the ERA will deal with multiple requests for guidance from the same market participant (Section 6.1.5).
- Additional administrative questions added to Appendix 1.
- The addition of two questions to the Declaration of Control of a Facility form. These questions relate to ownership and control and will allow the ERA to better gather relevant information for future portfolio determination assessments (Appendix 2).



## Appendix 1 Submission form

Anyone can make a submission relating to a Procedure Change Proposal, during the period indicated for public submissions.

Submissions must be made using the WEM Procedure Change Proposal submission form, which is published on EPWA's website and provided on the next page.<sup>14</sup>

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<sup>14</sup> Energy Policy WA, 2023, *WEM Procedure changes*, ([online](#)).

# WHOLESALE ELCTRICITY MARKET

## Submission to Procedure Change Proposal

EEPC\_2024\_03

WEM Procedure: Portfolio Determination

<b>Submitted by</b>	
<b>Name:</b>	
<b>Phone:</b>	
<b>Email:</b>	
<b>Organisation:</b>	
<b>Address:</b>	
<b>Date submitted:</b>	

### Submission

Clause 2.10.7 of the WEM Rules provides that any person may make a submission for a Procedure Change Proposal (including proposals developed by AEMO, the ERA, the Coordinator of Energy or a Network Operator) by completing this Procedure Change Submission form.

Submissions should be provided by email to the nominated contact in the call for submissions published with the Procedure Change Proposal.

#### *Guide Questions*

**Please provide your views on the Procedure Change Proposal, including any objections or suggested revisions.**

**Please provide an assessment whether the Procedure Change Proposal is consistent with the Market Objectives and the Wholesale Electricity Market Rules.**

**Please indicate if the Procedure Change Proposal will have any implications for your organisation (for example changes to your IT or business systems) and any costs involved in implementing these changes.**

**Please indicate the time required for your organisation to implement the changes, should they be accepted as proposed.**

## Appendix 2 – Proposed WEM Procedure (draft in tracked changes)

The proposed draft (in tracked changes) of the updated *WEM Procedure: Portfolio Determination* (version 7) is available on the ERA's website ([online](#)).

## Appendix 3 – Proposed WEM Procedure (clean draft)

The proposed draft of the updated *WEM Procedure: Portfolio Determination* (version 7) is available on the ERA's website ([online](#)).

## Appendix 4 Current WEM Procedure

The current *WEM Procedure: Portfolio Determination* (version 6) is available on the ERA's website ([online](#)).