Guideline to inform Balancing Market offers

Decision document

22 February 2019

Economic Regulation Authority

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DMS#####

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1.1. Introduction

On 3 January 2018 the Economic Regulation Authority published a draft Balancing Submission Guideline, which seeks to provide guidance to market participants on the ERA's interpretation of the undefined terms used in Rule 7A.2.17 of the Wholesale Electricity Market Rules[1].

Clause 7A.2.17 of the Market Rules requires market generators not to price in excess of their short run marginal cost (SRMC), when such behaviour relates to market power. Clause 7A.2.17 of the Market Rules states:

> 7A.2.17 Subject to clauses 7A.2.3, 7A.2.9(c) and 7A.3.5, a Market Participant must not, for any Trading Interval, offer prices in its Balancing Submission in excess of the Market Participant's reasonable expectation of the short run marginal cost of generating the relevant electricity by the Balancing Facility, when such behaviour relates to market power.

The consultation period for the Guideline closed on 26 February 2018. The ERA has now finalised the Guideline, following consideration of the received public submissions.

The current version of the Guideline may be updated at the time new information becomes available to the ERA, or if there are changes to the Market Rules.

1.2. Reason for the introduction of the Guideline

The terms 'reasonable expectation', 'short run marginal cost', 'relates to' and 'market power' are not defined in the Market Rules and have not been judicially considered. This can create uncertainty in interpreting these terms.

The ERA has responsibility for monitoring compliance with, and investigating potential breaches of, the Market Rules. The Guideline will assist market participants to understand its approach to monitoring compliance with clause 7A.2.17 of the Market Rules, and how it interprets the undefined terms.

1.3. Submissions received

On 3 January 2018, the ERA issued a notice calling for submissions on the draft Guideline. The submission period closed on 26 February 2018.

The ERA received submissions from the APA Group (no comments made), the Australian Energy Market Operator (AEMO), Perth Energy, ERM Power, the Australian Energy Council (AEC), Synergy, Alinta Energy and Bluewaters Power. The ERA also received a late submission from Community Electricity in April 2018.

Some matters raised in the submissions were beyond the scope of the Guideline, including the need for clause 7A.2.17 of the Market Rules, or specific circumstances of individual market participants. These matters were not incorporated in the Guideline.

A few common issues were raised by respondents.

[1] In this Guideline these are referred to as the 'Market Rules.

Alinta Energy, AEC and Community Electricity raised concerns that the non-binding character of the Guideline offered less comfort to Market Participants.

- The ERA is not able to provide a binding or definitive interpretation of the undefined terms in clause 7A.2.17 of the Market Rules, as this is a matter of interpretation of law and would be ultimately determined by the courts or a relevant review body. The purpose of the Guideline is to provide guidance of the ERA's interpretation of the undefined terms in the clause.

Most submissions raised the issue of factoring in risks due to the uncertainty of operations. These risks included, but were not limited to, forecasting errors and assumptions about the number of trading intervals a generator would be required to dispatch.

- The ERA updated section 3.1 of the Guideline to clarify the treatment of forecasting risks. As bidding in the Balancing Market is *ex ante* (based on forecasts), market participants must consider an element of uncertainty. The Guideline highlights that clause 7A.2.17 of the Market Rules requires bidding on a "reasonable expectation" basis, and therefore does not require Balancing Submissions to be submitted at the actual SRMC. Risk premiums are not valid cost components of SRMC and cannot be included in a generators reasonable expectation of SRMC for any trading interval.

ERM Power and Perth Energy argued that in cases where a generator has a forced outage and has to make reserve capacity refunds due to its inability to comply with dispatch instructions, these costs should be allowed to be recovered through the market.

- The ERA considers that reserve capacity refunds are not a valid cost element of SRMC.

The AEC stated that while the capacity market was intended to provide a signal to market participants on the "adequacy of generation capacity and need for investment", generators may seek to derive an economic profit from multiple sources, including the energy market.

- In section 3.1 of the Guideline, the ERA added that adding a risk premium to earn a return on the initial capital investment should not be included in the energy bids, as it does not form a valid cost component of SRMC.

Submissions stated that market power could not exist in only one trading interval. The AEC stated that the ERA should consider "…a collection of different but related intervals…. rather than investigating an isolated trading interval which may be affected by multiple factors." Stakeholders proposed various definitions of the term market power.

- The ERA clarified in section 4.2 of the Guideline that market power can be exercised in a single trading interval (as required by clause 7A.2.17 of the Market Rules).

ERM Power sought clarity over whether a generator would be deemed to exercise market power, if it withheld energy to avoid operating uneconomically in specific circumstances.

- The ERA has updated section 4.2 of the Guideline to state that there may be instances where withholding is not related to market power. The ERA would consider this on a case by case basis.

Appendix 2 sets out a summary of the feedback provided in the submissions and the ERA's responses.

Appendix 1 Submissions received

Australian Energy Council

Australian Energy Market Operator

Alinta Energy

APA Group

Bluewaters Power

Community Electricity

ERM Power

Perth Energy

Synergy

Appendix 2 Summary of feedback from submissions

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
APA Group		APA does not perceive any issues with the proposed Balancing Submission Guideline.	No response required.
AEMO	General comment	AEMO suggests that additional clarity is warranted in the draft guideline in relation to circumstances in which a Balancing Facility may be constrained on-out-of-merit.	This is a broader issue that is beyond the scope of the Guideline. No changes have been made to the Guideline.
	General comment	AEMO also suggests that the ERA considers adding information to the draft guideline about its interpretation of the similar bidding requirements for the Load Following Ancillary Service (LFAS) Market in clause 7B.2.15 of the Market Rules, or consider the development of a similar guideline.	This issue is beyond the scope of this Guideline. No changes have been made to the Guideline.

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
Perth Energy	Multiple comments on dispatch engine shortcomings	The basic problem, as the paper highlights, is that the existing dispatch engine is built around the assumption that marginal production costs increase with output, whereas under many circumstances the opposite is true. The inaccurate representation of plant operating costs within the dispatch engine will become more significant over time. We would assume that dispatch engines are available that include these capabilities and it would be wise for any decision on a new dispatch engine to consider such capability.	Issues with a new dispatch engine are beyond the scope of the Guideline. No changes have been made to the Guideline.
	3.1. Defining short run marginal cost	One cost that has not been considered by the Authority is the risk that a generating plant may fail to comply with a dispatch instruction and face reserve capacity refunds. Refunds are significant costs and have to be funded out of running revenue as they are not allowed for in the Reserve Capacity Price. For this reason a participant should add an uplift within their offers to cover this risk.	It is not the purpose of the market to cover a generator's cost of non-compliance. The ERA has added the following sentence in section 3.1: "Risk premiums are not valid cost components of SRMC and cannot be included in a generators reasonable expectation of SRMC for any trading interval. Additionally, the ERA considers the following not valid inclusions in a generator's SRMC: • Earning a return on the initial capital investment • Penalties imposed on generators for failing to comply with dispatch instructions that result in reserve capacity refunds."

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	3.1 Defining short run marginal cost	A serious difficulty with bidding, which is exemplified in each of the examples in the draft Guideline, is that the bidder must make assumptions about what level of load the plant will be dispatched at and for how long: If this assumption is wrong then the generator will either lose money or gain excess money. In these circumstances there is a strong incentive for generators to bid conservatively which, in turn, will tend to increase costs within the market. However, it would be very difficult for the ERA to mount a case against a participant whose bids appear high because of the current load uncertainties.	Sections 3.1 and 4.1 of the Guideline have been updated to address stakeholders' concerns about forecasting errors and uncertainties: "Forecasting errors are inevitable and there are valid reasons for reasonable expectations to deviate from actual outcomes (see section 4.1 for a description of reasonable expectation). "The ERA does not intend to take action against a market generator for making an error in its forecasting, as long as the balancing offer represents a reasonable expectation of this generator's SRMC of generating the relevant electricity. The ERA needs only to be satisfied the market participant has acted in a reasonable way. "The ERA would investigate offers that did not appear to represent a reasonable expectation of the SRMC of generating the relevant electricity in a given trading interval."
	3.1 Defining short run marginal cost	For plants where the overhaul frequency is driven by the number of starts these overhaul costs must be recovered through the start-up costs included within the bid price and are likely to become more significant if the frequency of overhauls is accelerated by fast starts or operation at high power.	The ERA has updated section 3.1 of the Guideline to include the following: "Some generator components require overhaul at a faster rate than the manufacturer recommendations depending on use. For example, generators operating in "fast start" mode or running at higher power can cause substantial wear on individual components. The replacement costs of these components can be characterised as variable costs and included in SRMC if they are incurred. That is, they must be true or actual costs incurred by the generator."

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	5 Worked examples	There is an error in the process for calculating Marginal Hear Rate in the examples.	The examples included in the Guideline are illustrative only. The Guideline has been updated (footnote 16) to clarify this: “As these are simplified examples, heat rates at other increments are not presented. In practice, smaller heat rate bands on either side of 40MW would be used.”
ERM Power	4.2 Market power	Together, this suggests that should a Market Participant wish to reduce its output to conserve fuel or to manage wear on equipment, they may be exercising market power inadvertently. However, in any interval, there is a risk that other Market Participants may change their bid, to either increase or decrease their bid output and prices. At times, this risk may be sufficiently great, that a Market Participant who had previously considered its bid to be economic may have a change in its reasonable expectations and wish to withdraw the low priced quantities from its bid. Question whether a participant withholding energy from market (by reducing output to conserve fuel or manage wear on equipment) constitutes exercising market power inadvertently. Also suggested participants changing their bid in intervals as a result of a change in its reasonable expectations.	Not every instance of withdrawing energy from the market (usually resulting in a higher balancing price) constitutes market power being exercised. There may be valid reasons why a generator might decide to withdraw its bid. The ERA has updated section 4.2 of the Guideline to state: “… there are instances where withholding may not be related to market power and the ERA has to be satisfied that any intention for withholding is reasonable.”

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	4.2 Market power	ERM contends that 'market power' is better defined more simply using a part of the ERA's notes that state "[a]n entity with market power can usually operate with little or no constraint from competitors, suppliers, customers or new entry". The addition of withholding quantities in the definition adds unnecessary complexity as this situation would not always be 'market power' for the reasons set out above, and is already contemplated by the ERA's overarching statement regarding 'market power'.	The second paragraph in section 4.2 should be retained as it provides a valid example of how market power could be exercised and how it could affect the market. No changes have been made to the Guideline.

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	Multiple risks identified	In particular, the risk of Forced Outage must be considered…. This is a risk that market generators currently bear, however, the ERA does not consider this in its thinking. Secondly, there is forecasting risk that must be considered. Due to load forecast changes and changes in other Market Participant behaviour, the dispatch of a generating unit can quickly change from being profitable to uneconomic dispatch. Dispatch in the WEM is further complicated with a two hour balancing gate horizon. Decisions made in terms of balancing offers may render Market Participants with an uneconomic outcome two hours later resulting in Market Participants having to withdraw offers from the market.	These risks have been addressed in section 3.1 of the Guideline to clarify that: a) the risk of non-compliance with dispatch instructions due to forced outages is to be borne by the generators and is not to be transferred to the market; and b) forecast risks and associated changes in behaviour would be taken into consideration.

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
Australian Energy Council	1.1 Purpose of this Guideline	The Energy Council appreciates the ERA setting out its interpretation of undefined terms in Rule 7A.2.17, but notes that the Guideline is not binding to the ERA, therefore much of the comfort offered by the Guideline is diminished. Use of the Guideline is also limited since it appears inconsistent with market objectives and other obligations imposed upon market participants.	The Guideline is intended to provide guidance to market participants on the ERA's current approach to monitoring compliance with clause 7A.2.17 of the Market Rules. Section 1.1 of the Guideline has been updated to include: "This will support greater confidence in the market and will promote more efficient market outcomes. "Ultimately, any final decision and interpretation of the Market Rules can only be made by the relevant review body or court. For contraventions of the Market Rules, the relevant body is the Electricity Review Board." The Energy Council does not clarify in what way the Guideline is inconsistent with the market objectives.
	1.1 Purpose of this Guideline	In addition, the Energy Council has residual concerns that the Wholesale Electricity Market's ("WEM's") current market power mitigation arrangements need material revision rather than the issue of clarifying guidelines.	This is a policy consideration and beyond the scope of the Guideline. No changes have been made to the Guideline.
	3.1 Defining short run marginal cost	At page 4 the Guideline discusses Short Run Marginal Cost and the ERA implies that production can be continuously variable beyond the minimum generation level.	The ERA has updated the Guideline to include footnote 9 to clarify: "The path to maximum generation is not necessarily continuously variable due to factors that may affect stability and efficiency."

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	3.1 Defining short run marginal cost	It is also noted (at page 8) that, "[p]rices in the separate capacity market provide a signal as to the adequacy of generation capacity and the need for investment". While the capacity market provides generators with a return on their investment, it cannot be guaranteed that this will be sufficient to justify capital required. Instead, investment decisions are likely to be made by forecasting both capacity mechanism returns and variable returns from generation….. The ERA needs to be cognisant of this when assessing generators against the Rule, and needs to ensure that any guideline is broad as practicable to encourage competition.	In monitoring a market participant's compliance with clause 7A.2.17 of the Market Rules, the ERA considers that profit is not a valid cost component of SRMC. Section 3.1 of the Guideline has been updated to state: "Risk premiums are not valid cost components of SRMC and cannot be included in a generators reasonable expectation of SRMC for any trading interval. Additionally, the ERA considers the following not valid inclusions in a generator's SRMC: • Earning a return on the initial capital investment."
	4.2 Market power	Furthermore, while the Rule specifies, 'for any Trading Interval', the Energy Council submits that the ERA has the freedom within its Guideline to assess market power behaviour over a number of trading intervals. Indeed, it would make more sense to determine whether market power has been exercised or not by considering a collection of different but related intervals, for example a series of trading intervals over a number of hot weekday afternoons.	The ERA considers whether or not market power exists in the context of clause 7A.2.17 of the Market Rules. The timeframe over which the assessment is made should be no longer than is necessary for trading to take place, which may be a single trading interval. The Guideline has been updated (footnote 11): "For any trading interval or a collection of intervals, pricing should reflect the reasonable expectation of SRMC."

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	5.3 Example 3	As it stands, the ERA assesses the Average Variable Cost by reference to MinGen of 105MW and an expectation that the plant, after start-up, would run for 12 trading intervals. By assessing the generator's costs in this way, the ERA does not consider the gas needed to achieve MinGen, nor possible variations in the expected run time of the generator. Both these factors are likely to affect the Average Variable Cost significantly.	Start-up costs are considered in the calculation of average variable cost, as stated in Example 5.3. The Guideline has also been updated (footnote 8) to state that: "SRMC and average variable costs are considered the same up to the point of minimum generation."
Synergy	General comment	Synergy considers the interpretation of clause 7A.2.17 (**SRMC Clause**) of the Wholesale Electricity Market Rules as expressed in the Guidelines is legally incorrect, is likely to result in sub-optimal outcomes and will cause significant practical issues.	The ERA completed a legal review of the proposed Guideline and is satisfied that the Guideline is legally correct. No changes have been made to the Guideline.
	General comment	The interpretation of the SRMC Clause in the Guidelines reduces what is clearly a market power mitigation provision to a simple pricing provision (i.e. simply restricts pricing to be at or below SRMC at all times as retrospectively assessed with a detailed consideration of the information that should have been available). If adopted, the Guidelines will create additional uncertainty about the correct application of the SRMC Clause and impose increase costs on the market.	The intent of the Guideline is to provide guidance of the ERA's interpretation of the undefined terms in clause 7A.2.17 of the Market Rules to create more certainty in the market. No changes have been made to the Guideline.

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	General comment	Further it will create significant practical issues and fails to consider how Market Participants will account for matters such as forecast uncertainty, the distribution of possible forecast errors and step changes and spikes in price estimates between Trading Intervals.	As noted above, the Guideline has been amended to address stakeholders' concerns about forecasting errors and uncertainties.
	3.1 Defining short run marginal cost	In principle: a) The method for identifying breaches of the SRMC Clause in the Guidelines is, in effect, the same as the method the ERA employed in the Vinalco SRMC dispute before the Energy Review Board (**SRMC Dispute**). b) It assumes the legal position the ERA took in the SRMC Dispute was correct and ignores the fact that the decision was agreed solely for the purposes of settlement and nothing else. c) Synergy did not accept the legal analysis in the decision in the Vinalco SRMC Dispute. Synergy maintain its position from the decision in the Vinalco SRMC Dispute and, therefore, opposes the interpretation used in the Guidelines.	In the Guideline, the ERA has applied the same approach of defining the SRMC as it has in the Vinalco dispute. The ERA continues to maintain its position on that matter and notes "…the (Electricity Review) Board finds that the Respondent, Vinalco Energy Pty Ltd contravened Rule 7A.2.17…"[2] as part of the Vinalco dispute. No changes have been made to the Guideline.

[2] http://www.edawa.com.au/cproot/18206/2/Application%20No%201%20of%202016%20-%20Decision%20-Independent%20Market%20Operator%20and%20Vinalco%20Energy%20Pty%20Ltd.pdf

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	3.1 Defining short run marginal cost	SRMC is a forward looking concept and requires some level of forecasting and judgement. Therefore, it is essential to examine whether a Market Generator has priced within its subjective reasonable expectation of SRMC, having regard to data and information available to the relevant Market Generator at that time.	SRMC is a forward-looking concept, subject to forecasting and judgement, as stated in section 3.1 of the Guideline. For this reason, the term ‘reasonable expectation’ is a very important part of the clause, which is why the ERA provided its interpretation of this term in the Guideline. No changes have been made to the Guideline.
	4.2 Market power	Market power can only exist in circumstances where there are no other providers available as a substitute to provide the relevant electricity within a reasonable timeframe and/or limited or no ability for consumers to respond to the relevant pricing.	The statement that market power can only exist where there is no competition is theoretically wrong. No changes have been made to the Guideline.
	4.2 Market power	Except for very rare circumstances, if at all, market power cannot exist for only one Trading Interval.	As noted above, the ERA considers whether or not market power exists in the context of clause 7A.2.17 of the Market Rules. The Guideline has been updated (footnote 11): “For any trading interval or a collection of intervals, pricing should reflect the reasonable expectation of SRMC.”
	4.2 Market power	In the context of the SRMC Clause, the phrase “relates to market power” should be read narrowly to mean “relates to an inappropriate use (i.e. abuse) of market power which results in the market not functioning effectively in accordance with the Wholesale Market Objectives.	The ERA must apply the wording of clause 7A.2.17 of the Market Rules as drafted. In forming an opinion of whether the behaviour ‘relates to market power’, the ERA will take into consideration all relevant circumstances for each specific case.

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	2 Clause 7A.2.17 of the Market Rules	In Synergy's view the interpretation of the SRMC Clause used in the Guidelines is inconsistent with the Market Objectives. For example: a) If a Market Participant prices in accordance with the definition of SRMC used, it will likely lose money. b) A Market Participant is unable to price uncertainty and risks into Balancing Submissions. c) The interpretation undermines long-term market efficiency by prohibiting competitively determined price discovery.	As all dispatched electricity receives the market balancing/clearing price of the last/highest priced unit dispatched for all of its electricity, market participants would receive an additional return on their operations, unless they are always the marginal generator. Section 3.2 has been updated to state: "Due to these peculiarities of electricity generation, when a generator offers prices above its reasonable expectation of its SRMC, but does not exceed its average variable cost, the ERA considers that the behaviour may not be related to market power."
	3.2 Peculiarities of electricity generation and balancing submissions	The Guidelines state that, because it is impossible for a generator to increase production by 'one more unit' [of production] from its zero generation, SRMC cannot include a component for start-up costs. This statement appears to be incorrect and based on a narrow, and static, interpretation of the phrase "one more unit".	The Guideline states that start-up costs can be included as part of the average variable cost, which is considered to be an acceptable price limit when market power exists. To improve clarity, the Guideline has been updated for the following two footnotes (7 and 8): "Here 'one more unit' is not necessarily 1MW. For example, one more unit could be the difference in output from starting up and going to minimum generation, in which case a generator can include start-up costs in the SRMC calculation. "SRMC and average variable costs are considered the same up to the point of minimum generation."

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	3.2 Peculiarities of electricity generation and balancing submissions	In Synergy's view, the Guidelines mistakenly assume that "one more unit" must always be equal to 1MW (or less, but in any case a static number). However, the concept of "one more unit" is inherently dynamic and the size of the next "unit of production" depends on current output of a Facility. For example, when operating at 0MW, "one more unit" is equal to the difference between 0MW and the 'minimum stable generation' level of the relevant Facility.	The term 'one more unit' is a non-static number and can be different from 1MW. To improve clarity on this, section 3.2 of the Guideline has been amended to include footnote 7: "Here 'one more unit' is not necessarily 1MW. For example, one more unit could be the difference in output from starting up and going to minimum generation, in which case a generator can include start-up costs in the SRMC calculation."
	3.1 Defining short run marginal cost	Additionally, the definition of SRMC in section 3 of the Guidelines also undermines the requirement of the WEM for Market Participants to self-schedule their facilities through the available markets and artificially suppresses the market's ability to allow competitive forces to set a price that includes all of the relevant costs, including costs associated with uncertainty.	The Guideline provides guidance on how the ERA defines SRMC and average variable cost. Average variable cost includes a number of valid, relevant variable costs and excludes avoidable fixed costs. Each market participant is expected to bid in the Balancing Market by applying a reasonable expectation of its SRMC. Clause 7A.2.17 of the Market Rules and the ERA's interpretation are designed to ensure competition in the market and market efficiency. The ERA considers that the Guideline provides sufficient freedom for market participants to price their bids and is therefore consistent with the requirement of the Market Rules for market participants to self-schedule their facilities.

	Examples	The following examples illustrate some of the associated deficiencies in the interpretation adopted in the Guidelines. In each example, the generator is assumed to have market power: a) Where a Market Participant forecasts the Balancing Price will equal the AVC of providing any incremental electricity, the Guidelines effectively require it to offer into the Balancing Market at or below its AVC. All else remaining equal, this results in the Market Participant being exposed to a 50-50 chance of making or losing money….. b) Further, it is also likely that, in the above example, the Balancing Price, and the forecasted dispatch profile of the Market Participant's Facility, will change after the Market Participant makes the Balancing Offer….. c) In the event the Balancing Submission made in the above example is made just prior to Gate Closure, application of the interpretation in the Guidelines requires a Market Participant to "lock in" a price in its Balancing Submission it knows is likely to be incorrect. d) Alternatively, consider the situation where the Market Participant decides that its Facility has a high likelihood of experiencing an Outage if it operates, but does not have a scheduled outage approved. Application of the interpretation in the Guidelines requires	The Guideline aims to provide market participants with a high level understanding of the approach the ERA takes in monitoring compliance with clause 7A.2.17 of the Market Rules. The Guideline cannot consider all potential variables and situations. As noted above, the examples included in the Guideline are illustrative only. The ERA is aware that there are situations that may result in a market participant bidding in the Balancing Market above its SRMC, and potentially above its average variable cost. Forecast risks are accepted and factored in, as discussed. No additional changes have been made to the Guideline.

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
		the Market Participant to offer at its AVC, rather than offer at the price cap in order to minimise the likelihood of the Facility experiencing a catastrophic failure……	
	4.1 Reasonable expectation	Arguably, this interpretation has the effect of changing the drafting of the SRMC Clause from: a) "…. a Market Participant must not ….[offer prices]….in excess of the Market Participant's reasonable expectation of SRMC"…. to b) "… a Market Participant must not ….[offer prices]… in excess of a reasonable Market Participant's expectation of SRMC" (the words required to give effect to the definition used in the Guidelines)	Clause 7A.2.17 of the Market Rules and the ERA's interpretation of this clause are clear that it must be the market participant's reasonable expectation of its SRMC. No changes have been made to the Guideline.
	3.1 Defining short run marginal cost	The interpretation of the Guidelines also does not allow Market Participants to factor in any uncertainty associated with inputs used to calculate SRMC. An important aspect of competitive price discovery is that a competitive market will factor in all relevant risks in the prices offered. Such factoring allows for economically efficient commitment decisions to be made in short term, and economically efficient investment decisions to be made over the longer term.	As noted above, the Guideline has been updated to address stakeholders' concerns about forecasting errors and uncertainties. The ERA needs only to be satisfied that the generator has acted in a reasonable manner. Further, long-term economic investment decisions in the Wholesale Electricity Market are supported by the separate capacity market and are not a valid component of SRMC.

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	4.2 Market power	The Guidelines state that market power is the "ability to influence price and benefit financially from this ability". Synergy notes that the effect of this definition is that any Market Participant that sets the Balancing Price has the "ability to influence price", and any price offered in such a case above SRMC "benefits" the Market Participant. This interpretation cannot be correct. "…. Further, because there is no certainty which Facility will set the Balancing Price in any Trading Interval, the interpretation requires all Facilities to offer at, or below, SRMC at all times. To the extent such pricing provision was intended, the limitations on the application of the SRMC Clause (i.e. clause states it only applies in certain instances) is superfluous."	The proposed definition reflects the ERA's interpretation of clause 7A.2.17 of the Market Rules. Depending on the circumstances, any generator has the ability to influence the balancing price and to benefit financially, without necessarily being the generator that sets the balancing price. The ERA notes that clause 7A.2.17 of the Market Rules applies to all generators for all trading intervals, except for the instances specified in the rule itself. For this reason, no changes have been made to the Guideline.

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	4.3 When pricing relates to 'market power'	Whether pricing behaviour "relates to market power" is an element of the SRMC Clause, and therefore the ERA will be required to prove, on the balancing of probabilities, that there is a link between pricing behaviour and market power. Generally, simple inference from past behaviour is unlikely to satisfy this element, and therefore, there exists a greater burden of proof that a Balancing Submission "relates" to market power that that proposed in the Guidelines….. Synergy also considers that the causal link cannot be proven in circumstances where there is an alternative explanation for the behaviour that is unrelated to market power.	The ERA does not use simple inference from past behaviour when monitoring compliance with clause 7A.2.17 of the Market Rules and investigates actual costs and actual behaviour at the time in question. Section 4.1 of the Guideline was updated to clarify: "The ERA does not intend to take action against a market generator for making an error in its forecasting, as long as the balancing offer represents a reasonable expectation of this generator's SRMC of generating the relevant electricity. The ERA needs only to be satisfied the market participant has acted in a reasonable way. "The ERA would investigate offers that did not appear to represent a reasonable expectation of the SRMC of generating the relevant electricity in a given trading interval."
	General comment	The interpretation used in the Guidelines has the effect of re-writing the SRMC Clause so that any prices offered below AVC are not a breach. In effect, this makes the reference to SRMC in the SRMC Clause irrelevant to any determination of compliance with the clause…. Synergy considers these points lend further weight to its argument that the ERA's interpretation of SRMC Clause cannot be correct.	The Guideline is intended only to provide guidance to market participants on the ERA's current approach to monitoring compliance with clause 7A.2.17 of the Market Rules. Market participants may seek to recover additional costs above their strict variable costs to be able to operate in the long-term and such behaviour may not relate to market power. Therefore, the ERA's interpretation aims to give some comfort that such recovery, when not related to market power, is not prohibited by clause 7A.2.17 of the Market Rules. No changes have been made to the Guideline.

	5. Worked examples	The simplified examples in the Guidelines hide many practical issues. The Guidelines should explicitly consider and explain how a Market Participant is expected to: a) Convert raw SRMC prices into monotonically increasing prices… b) Account for forecast uncertainty, including the distribution of possible forecast errors …. c) Account for remaining risks and uncertainty… d) Account for step changes and spikes in price estimates between Trading Intervals. e) Account for step changes and spikes in price estimates between tranches in Balancing Submissions for the same Trading Intervals. f) Deal with a combination of the above issues occurring concurrently. g) Deal with instances where Market Participants expect to be “constrained-on” or “constrained-off” for extended periods of time… h) Estimate the number of Trading Intervals over which start costs can be “smeared” in the calculation of AVC…	The presented examples are illustrative only. Adding more detail in the examples would quickly overcomplicate them. It is not the intention of the ERA to provide an example for every possible market scenario. The Guideline has been updated (footnote 16) to clarify this: “As these are simplified examples, heat rates at other increments are not presented. In practice, smaller heat rate bands on either side of 40MW would be used.”

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
Alinta Energy	General comment	Broadly, Alinta considers that the proposed Guideline is inconsistent with the market objectives and that consideration should be instead given to moving the current market power mitigation arrangements to better reflect regulatory practice in the world. We consider that enabling more flexibility will allow more dynamic and genuine competition in the market, with less risk of inefficient (costly) intervention and no loss of ability for the ERA to review unusual outcomes.	This is a broader issue that is beyond the scope of the Guideline. No changes have been made to the Guideline.
	General comment	The greater concern in industries with substantial government ownership, is not market power abuse, but rather how to ensure that government-owned entities will operate in a commercial manner.	This is a broader issue that is beyond the scope of the Guideline. No changes have been made to the Guideline.
	General comment	Alinta recommends that consideration should be given to removing clause 7A.2.17 rather than attempting to interpret it through a Guideline. Removing clause 7A.2.17 represents the most effective option of ensuring the market objectives are met. Clause 7A.2.17 by its very nature restricts the market offers participants can make. Its existence reduces the economic efficiently of the market outcomes, failing the economic efficiency element of the market objectives.	This is a broader issue that is beyond the scope of the Guideline. No changes have been made to the Guideline.

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	General comment	Take the scenario of a battery co-located with a solar or wind power station. Through Clause 7A.2.17 this facility is required to make market offers at its reasonable expectation of Short Run Marginal Cost (SRMC), which for the battery would be the expected cost of electricity injected. Where the energy comes from solar or wind this is zero. As written, Clause 7A.2.17 could be interpreted to require the battery to offer its capacity at no cost in all trading intervals, which is not logical. It would breach this market rules to store the energy for a time period where it has higher economic value. Does Clause 7A.2.17 therefore prevent the use of batteries to store energy?	This scenario is beyond the scope of the Guideline. Various agencies, including AEMO, the Public Utilities Office, Rule Change Panel and ERA are currently looking at defining how batteries would be classified and incorporated into the generation mix of the South West Interconnected System and in the Market Rules. The question further assumes that the behaviour will relate to market power at all times and this may not necessarily be the case. No changes have been made to the Guideline.
	1.1 Purpose of this Guideline	Alinta notes that, while the ERA may in future enforcement matters refer a court to the proposed guideline, and the court might have regard to it if it considers it to be persuasive, it has no formal legal status. Alinta challenges the ERA's statement that the Guidelines will create a shared understanding, nor are they likely to improve the efficiency of the market. Given this, coupled with the flexibility reserved by the EAR, and the fact that the Guidelines have no formal legal status, Alinta questions whether the Guidelines create any meaning or value.	The Guideline is intended to provide guidance to Market Participants on the ERA's current approach in monitoring compliance with clause 7A.2.17 of the Market Rules. Section 1.1 of the Guideline has been updated to include: "Ultimately any final decision and interpretation of the Rules can only be made by the relevant review body or court. For contraventions of the Market Rules, the relevant body is the Electricity Review Board."

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	4.2 Market power	The proposed guideline suggests that "any" market power, even if not "significant or sustained", is of concern under Rule 7A.2.17 and that "the timeframe over which the assessment [of market power] is made is no longer than is necessary for trading to take place. In the WEM, this is a single Trading Interval.' In cases under the Competition and Consumer Act 2010 (CCA), Australian courts have rejected a short-term approach to assessing market power. Alinta is concerned that the proposed guideline might be read as suggesting that a single Trading Interval involving bidding above SRMC (as defined by the ERA) could constitute evidence of market power. If this is the ERA's intent, then Alinta is strongly opposed to this principle given that numerous, legitimate bidding strategies unrelated to market power could be interpreted as resulting in bids that appear to exceed SRMC values when narrowly defined for particular trading intervals. The potential pursuit of absolutely everything by absolutely anybody at absolutely any time no matter how immaterial or what might be the individual circumstances appears somewhat excessive.	The ERA considers whether or not market power exists in the context of clause 7A.2.17 of the Market Rules. The timeframe over which the assessment is made should be no longer than is necessary for trading to take place, which may be a single trading interval. The Guideline has been updated to reflect this.

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	4.2 Market power	Alinta considers that an economic approach to considering market power would be more appropriate, in a similar way to the OECD definition: ***Market power*** *refers to the ability of a firm (or group of firms) to raise and maintain price above the level that would prevail under competition is referred to as market or monopoly power. The exercise of market power leads to reduced output and loss of economic welfare.*[3]	This is one way of defining 'market power'. However, for the purposes of the Wholesale Electricity Market, the proposed interpretation of 'market power' in the Guideline appears the most appropriate. No changes have been made to the Guideline.

[3] http://stats.oecd.org/glossary/deatil.asp?!ID=3256

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	Multiple general comments	Thus the ERA conclude that the reference to SRMC in Clause 7A.2.17 should be interpreted as AVC. Alinta does not agree with the ERA's interpretation of this and suggests that in applying Clause 7A.2.17, a greater consideration of the market objectives be used in arriving at an alternative definition for SRMC. To promote economic efficiency, generators should have the freedom to make market offers with all necessary flexibility to match those offers to their expected opportunity costs. Rather than limit the definition of SRMC to AVC as the ERA is proposing, a superior approach would be to use a far broader definition to encourage competition and market efficiency, thereby delivering lowest cost outcomes to WA electricity consumers, and then to focus on achieving the longer-term benefits of actual competitive rivalry.	The ERA notes Alinta's comments, but will maintain its proposed approach. The ERA is bound to apply the wording of the clause. Market participants may seek to recover additional costs, above their strict variable costs, to be able to operate in the long-term and that such behaviour may not relate to market power. The interpretation and approach aim to give comfort that such recovery, when not related to market power, is not prohibited by clause 7A.2.17 of the Market Rules. No additional changes have been made to the Guideline.

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	4.3 When pricing 'relates to' market power	The ERA introduces new a new undefined term of standard pricing behaviour in an attempt to interpret when pricing behaviour in an individual Trading Period relates to market power.	The use of the concept of standard pricing behaviour intends to support the ERA in assessing whether a market participant's behaviour relates to market power. Section 4.3 of the Guideline was updated to include footnote 12: "Clause 7A.2.18 (a) of the Market Rules allows the ERA to take into consideration a market participant's "historical Balancing Submissions, including changes made to Balancing Submissions, in which a pattern of behavior may indicate an intention to create a false impression in the Balancing Market;" It is not intended as a definition of specific behaviour, but rather aims to monitor for deviations.
	3.1 Defining short run marginal cost	In the Guideline the ERA defines AVC as the sum of all variable costs and Avoidable Fixed Costs without defining the time period for this averaging. The ERA acknowledges that the SRMC is a forward-looking concept but are not explicit in whether the calculation of AVC is to also be forward looking.	Section 3.1 of the Guideline has been amended to clarify that: "Average variable costs are also considered forward-looking, because some inputs need to be forecast (for example, the dispatch load and the number of trading intervals a generator is expected to run). Therefore, similar judgements are required to estimate a generator's average variable costs."
Bluewaters	3.1 Defining short run marginal cost	Bluewaters considers that the costs associated with the start-up of all generators need to be considered in the AVC – irrespective of the generation technology including baseload generators.	The ERA notes that this is the case and has also included footnote 8 in the Guideline to provide further clarification that up to the point of minimum generation SRMC and average variable cost are considered the same.

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	5 Worked examples	As such, Bluewaters considers the worked examples set out in section 5 of the Guidelines, when applied to a baseload generator, could be further clarified to reflect the above.	As noted, simplified examples have been used and the Guideline has been amended to make this explicit.
	3.1 Defining short run marginal cost	Furthermore, as there is significant uncertainty as to how long a generator will run once start-up has occurred, Bluewaters considers the calculation of AVC should allow a risk premium to account for such uncertainty. Alternatively, for the purpose of calculating pre-trading interval start-up cost, the Authority may wish to limit the number of expected run-hours to a suitable level.	As noted, the Guideline has been amended to address stakeholders' concerns around forecasting errors and uncertainties. Introducing a limit to the number of expected run-hours for the purposes of calculating pre-trading interval start-up costs, may potentially increase the return received by some generators beyond their true costs, which is inconsistent with the intent of the Market Rules.
	General comments	For example, an offer needs to take account (a) the dynamic nature of the Spinning Reserve cost allocation and (b) the relationship between Balancing Offers and Load Following provision in the market. In other words, Bluewaters considers the SRMC/AVC should be used as guides only, and prudent judgement should be exercised while performing such evaluations.	SRMC is a forward-looking concept and as such a market participant's reasonable expectation of SRMC may differ from the actual SRMC. As the Guideline states, clause 7A.2.17 of the Market Rules requires market participants to not offer prices in excess of their 'reasonable expectation' of SRMC. No further changes have been made to the Guideline.
Community Electricity	General comment	I support the broad thrust as being reasonable.	No response required.

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	1.1 Purpose of this Guideline	I perceive it to be unreasonable for the Guidelines to be non-binding on the ERA. It seems to me that a central concept is that the ERA in its role as enforcer is encouraging an expansive definition of "SRMC" (to include Avoidable Variable Costs). While this seems to me to be proper, I suggest that that interpretation should be anchored to reality. I support minimising bureaucracy, but I perceive that the proper place for this 'interpretation' is in the market Rules via a Rule Change. It seems to me to be inappropriate for such an important issue to be referenced to an ethereal non-binding Guideline whose existence would not be reasonably known to a Market Participant.	The Guideline is intended to provide guidance to market participants on the ERA's current approach to monitoring compliance with clause 7A.2.17 of the Market Rules. Section 1.1 of the Guideline has been updated to include: "This will support greater confidence in the market and will promote more efficient market outcomes. "Ultimately, any final decision and interpretation of the Market Rules can only be made by the relevant review body or court. For contraventions of the Market Rules, the relevant body is the Electricity Review Board." The ERA notes that any person can make rule change proposals to the Rule Change Panel. The Guideline is available on ERA's webpage to all interested parties.
	4.2 Market power	Regarding the definition of Market Power, I suggest that a participant has market power if i) it is setting the Balancing Price, or ii) could reasonably be expected to be setting it but for some reason isn't.	The proposed definition reflects the ERA's interpretation of clause 7A.2.17 of the Market Rules. Depending on the circumstances, any generator has the ability to influence the balancing price and to benefit financially, without necessarily being the generator that sets the balancing price. The ERA notes that clause 7A.2.17 of the Market Rules applies to all generators for all trading intervals, except for the instances specified in the rule itself. For this reason, no changes have been made to the Guideline.

Participant	Section reference	Issue (as directly quoted in submission)	ERA responses and summary of changes made to the draft Guideline
	3.1 Defining short run marginal cost	I perceive that the guideline ought to more thoroughly provide for the reasonable expectation of a run-time. Such an expectation is difficult to form because of systematically inaccurate operational forecasting by System Management (mostly Intermittent Generators) combined with the relatively long gate closures. It seems to me that where a plant is not running and is out of merit, it could argue that its reasonable expected run time is a single Trading interval for each and every interval of the Balancing Horizon. An alternative is for it to expect to run for the average run-time historically experienced in reasonably similar circumstances.	As noted above, the Guideline has been updated to address stakeholders' concerns about forecasting errors and uncertainties. The ERA needs only to be satisfied that the generator has acted in a reasonable manner. The ERA has updated section 3.1 to include: "Forecasting errors are inevitable and there are valid reasons for reasonable expectations to deviate from actual outcomes (see section 4.1 for a description of reasonable expectation).
	General comment	I suggest that the Guideline should additionally address portfolio bidding (Synergy).	This issue is beyond the scope of the Guideline. No changes have been made to the Guideline.