

Wholesale Electricity Market Rules and Gas Services Information Rules

Compliance Report for the period 1 July 2019 to
31 December 2019

31 January 2020

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1. Summary

The Economic Regulation Authority is responsible for the compliance and enforcement functions in the Wholesale Electricity Market Rules and the Gas Services Information (GSI) Rules.

This report provides Market Participants and other interested parties with a summary of the ERA's compliance activities for the reporting period 1 July 2019 to 31 December 2019. The report also discusses the ERA's monitoring activities and other requirements of recent Rule Changes.

During the current reporting period the ERA recorded 68 new alleged breach matters. In the last reporting period - 1 January 2019 to 30 June 2019 - the ERA recorded 70 new alleged breach matters.

The information in this report satisfies the requirements of clause 2.13.26 of the Market Rules and clause 167(1) of the GSI Rules, which require the ERA to publish six-monthly reports summarising matters brought before the Electricity Review Board, including details of any civil penalties imposed by the ERA.

Following on from the ERA's April 2019 investigation into Synergy's pricing behaviour in the balancing market under clause 7A.2.17 of the Market Rules, the Electricity Review Board has now commenced proceedings on the application (No 1 of 2019) made by the ERA for orders pursuant to regulation 32(1) of the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* (WA). The ERA's investigation concluded that prices offered by Synergy between March 2016 and 2017 exceeded the reasonable expectation of the short run marginal cost of generating electricity and that Synergy's behaviour was related to its market power. This matter is discussed in more detail in section 3.

Terms capitalised in this report include terms defined under Chapter 11 of the Wholesale Electricity Market Rules.

2. Compliance update

The ERA's compliance and enforcement functions include monitoring Market Participants' compliance with the Market Rules and GSI Rules and investigating alleged breaches of these rules.

2.1 Alleged breach reports

Alleged breaches may be identified by the ERA or reported by external parties. The Australian Energy Market Operator is required to report Market Participants' alleged breaches to the ERA.¹ Market Participants may also self-report alleged breaches. Details of all alleged breaches reported to the ERA are recorded in a compliance register.

Between 1 July 2016 and 31 December 2019, 613 alleged Market Rule and GSI Rule breaches have been registered by the ERA. In this reporting period, 1 July 2019 to 31 December 2019, the ERA registered 68 alleged breaches. AEMO reported 55 of this period's alleged Market Rule and GSI Rule breaches.

The ERA encourages self-reporting by Market Participants. Nine alleged breaches were self-reported this reporting period. Self-reporting of alleged breaches indicates a Market

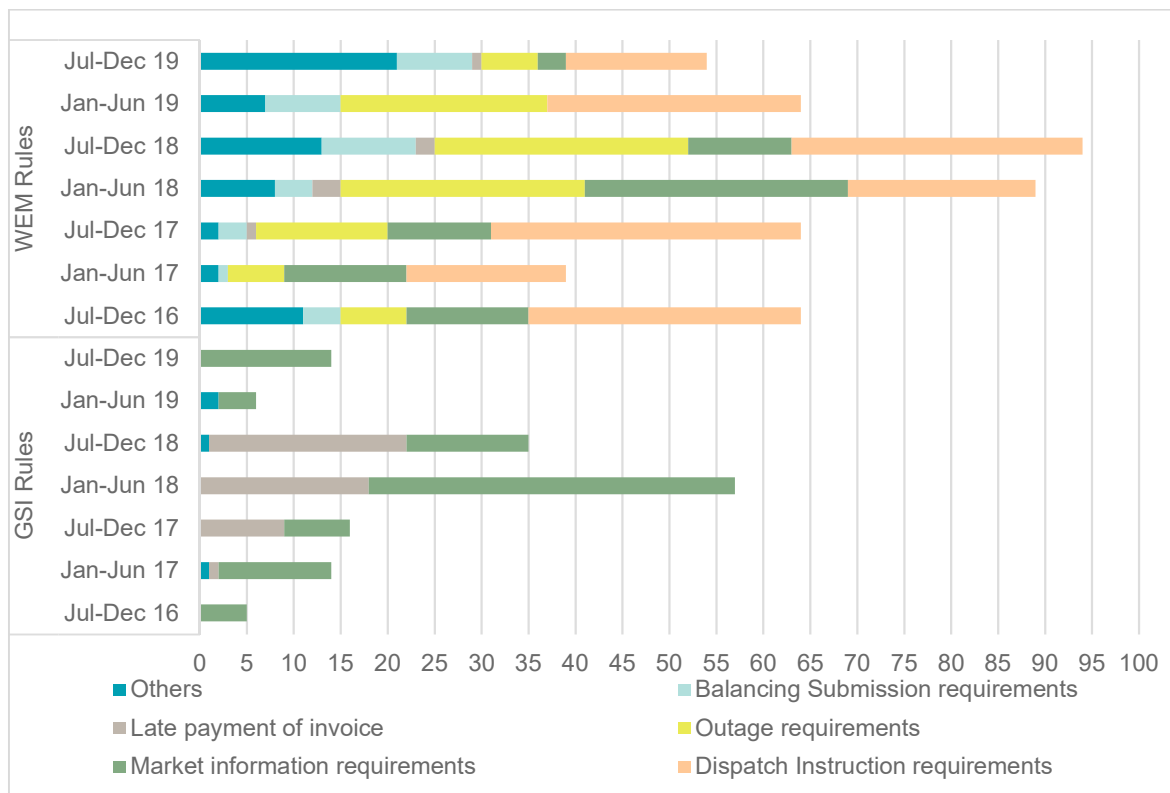
¹ Refer to clauses 2.13.8, 2.13.9A and 2.13.9C of the Market Rules and clauses 165A(1) and 165A(3) of the GSI Rules.

Participant understands its compliance obligations and has reasonable compliance processes in place to identify and mitigate future Market Rule non-compliance.

The dates that alleged breaches are reported to the ERA are not indicative of the date of the alleged breach.

Figure 1 shows the number of all alleged breaches reported to the ERA by breach category for each six-month period since 1 July 2016.

Figure 1: Alleged breach reports by breach category²



(Source: ERA data)

The largest alleged breach category reported this reporting period, 1 July 2019 to 31 December 2019, was Others. Most of the Others alleged breaches related to Market Rule requirements of Market Participants to provide certain data calculations, instructions and information to other Market Participants. The number of Others alleged breaches for the most recent six-month period, 21, was higher than in previous six-month periods. Eighteen of the alleged breaches received by the ERA this reporting period had breach dates ranging between 1 October 2017 and 14 November 2018.

Market Information requirements was the second largest alleged breach category this reporting period with 15 GSI Rule alleged breach matters recorded and two Market Rule alleged breach matters recorded. Slightly more than half of these alleged breaches were due to the late provision of forecast production, consumption and gas flow information to AEMO for the Gas Bulletin Board. Two alleged breaches of Market Information requirements were for the late provision of information for AEMO to use for the long-term projected assessment of the South West Interconnected System Adequacy.

Dispatch Instruction requirements of the Market Rules was the third largest alleged breach category this reporting period. Most of this reporting period's 15 Dispatch Instruction alleged

² An alleged breach report may consist of multiple breach events.

breaches arose due to Market Participants not complying with their most recently issued Dispatch Instructions. The remaining three alleged breaches in this category related to Market Participants not confirming the receipt of Dispatch Instructions or Operating Instructions.

Six alleged breaches of the Balancing Submission requirements category during this reporting period were due to Market Participants failing to ensure their Balancing Submissions accurately reflected their Facilities' availability. Four of these alleged breaches were self-reported by Market Participants.

There were six Outage alleged Market Rule breaches reported during this reporting period. Most of the Outage alleged breaches were due to Market Participants not logging Forced Outages to reflect their Facilities' unavailability.

There was one alleged breach of a Market Participant not paying an invoice on time during this reporting period.

2.2 Dispatch Instruction, Balancing Submission and Outage quarterly investigation process

The ERA determines Market Participants' compliance with Dispatch Instructions, Outages and Balancing Submissions during a quarterly investigation process.

During this process, information contained in non-compliance reports and constraint payment data provided to the ERA by AEMO are analysed to determine whether Market Participants have complied with the Market Rules.

The quarterly investigation process is carried out to meet the ERA's requirements of clause 7.10.8 of the Market Rules. The investigation also considers whether any constrained payments to non-compliant Market Participants need to be recovered.³

Quarterly results from the ERA's constrained payment data analysis between April 2016 and September 2019 are shown in Figure 2.

Figure 2: Quarterly non-compliance with Dispatch Instructions process

(Investigations completed between 1 July 2016 and 30 September 2019)



(Source: ERA data)

³ Where a Market Participant's Facility's actual generated quantity was materially different from its Balancing Submission quantities then it may be entitled to Out of Merit constrained off or on compensation as per section 6.16A of the Market Rules, unless it was non-compliant with a Dispatch Instruction under clause 7.10.1.

2.3 Compliance monitoring

Clause 7A.2.10 of the Market Rules sets out when a Market Participant can update its Balancing Submission after Balancing Gate Closure has occurred. In 2018, the ERA identified a situation where a Market Participant did not comply with these requirements, contravening clause 7A.2.10. This non-compliant update resulted in the Market Participant reacting to information that other participants were unable to use. Following the ERA's investigation of the non-compliant Market Participant, a formal warning was issued and a notice⁴ was published on the ERA website. The ERA implemented a monitoring program in response to this non-compliance to identify other non-compliant Balancing Submissions. The ERA has completed this monitoring program and expects to re-run the program in the future.

During the monitoring program, the ERA identified that there may be opportunities for Market Participants to improve their compliance with the requirement to notify AEMO of changes to a Balancing Submission made after Balancing Gate Closure. In certain circumstances where a Market Participant has submitted a Balancing Submission after Balancing Gate Closure, clause 7A.2.11 of the Market Rules requires the participant to provide AEMO with written details of the nature of the Internal Constraint or External Constraint. In February and March 2020, the ERA will undertake a targeted monitoring program aimed at identifying instances where written notification was not provided to AEMO as required under the Market Rules.

The GSI Rules place an obligation on the ERA to monitor both Gas Market Participants and AEMO's compliance with the GSI Rules and Procedures. The ERA is currently undertaking a targeted monitoring program to identify non-compliance with the GSI Rules. Details of this program are summarised at item 7 of the minutes from the Gas Advisory Board meeting that took place on Thursday, 26 September 2019.⁵ The GSI monitoring program aims to identify non-complaint behaviour resulting from timeliness of information submitted to the Gas Bulletin Board and, where applicable, the accuracy of information provided to AEMO.

2.4 Investigation outcomes and enforcement actions

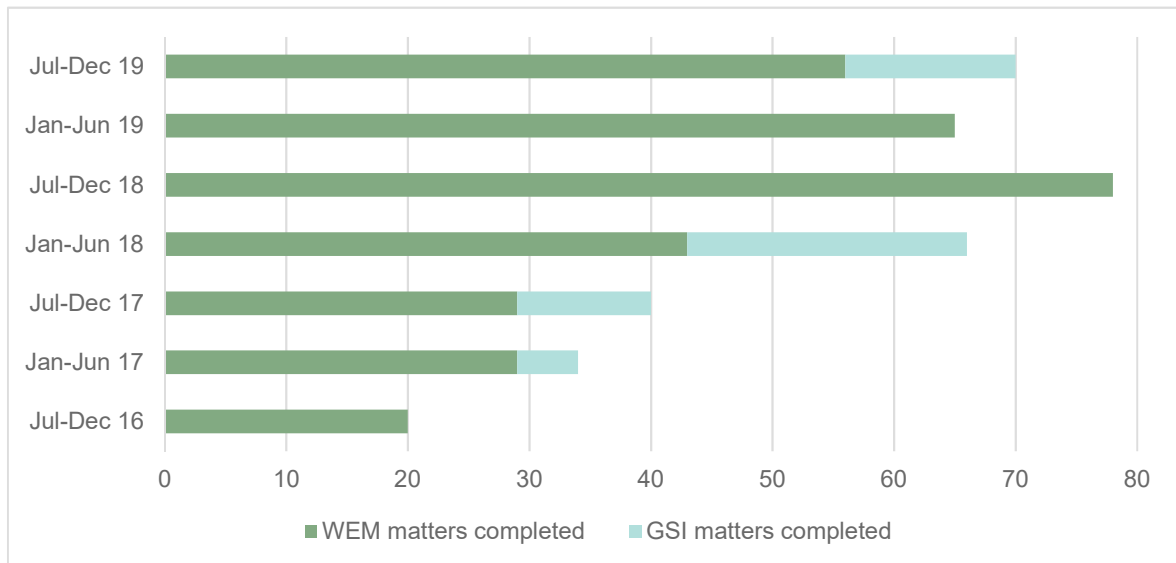
The ERA completed 70 investigations this reporting period. In the previous six-month period, it completed 64 investigations. Since 1 July 2016, the ERA has completed a total of 373 investigations. Figure 3 shows the number of investigations completed in each reporting period since 1 July 2016.⁶

⁴ Economic Regulation Authority, 'Notice – Investigation of non-compliant Balancing Submissions after Gate Closure', ([online](#)) [accessed 14 January 2019].

⁵ Rule Change Panel Gas Advisory Board (2019) 'Item 7: GSI Rules Compliance Monitoring and Investigation'. *Minutes of the Gas Advisory Board meeting 27 September 2019*, Training Room 2, Albert Facey House.

⁶ The ERA became responsible for the compliance functions in the GSI and Market Rules on 1 July 2016.

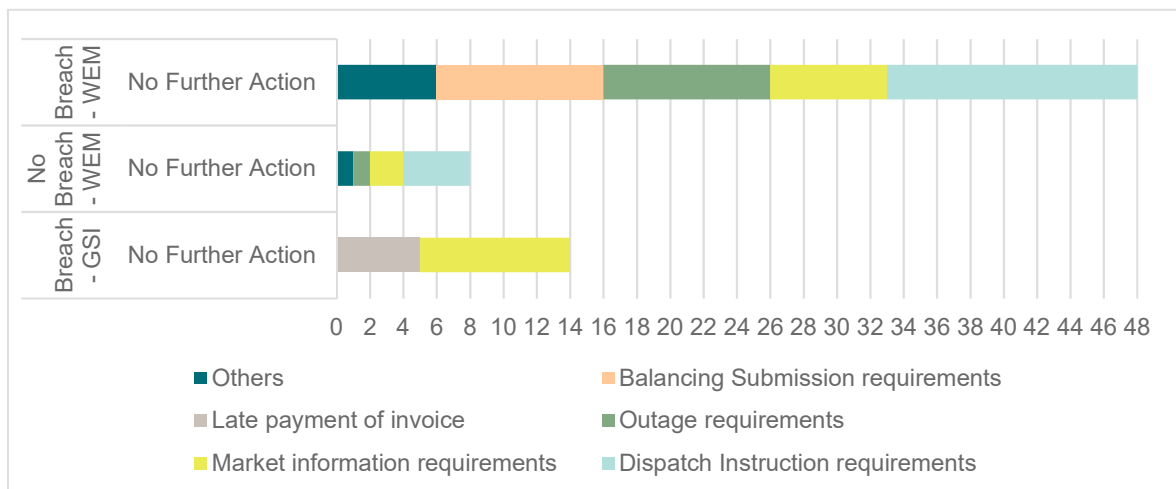
Figure 3: Investigations completed by reporting period between July 2016 and December 2019



(Source: ERA data)

Figure 4 summarises the outcomes of the 70 investigations completed during this reporting period.

Figure 4: Investigation Outcomes for period 1 July to 31 December 2019



(Source: ERA data)

Eight of the investigations this reporting period determined that the participant was not in breach.

If the ERA determines that a breach has occurred, it has statutory compliance responses available (for example, warnings or commencing proceedings before the Electricity Review Board), as well as administrative responses such as education advice.

The ERA determined breaches in 62 investigations, but no further action was required as the matters were considered low risk. For these matters, the ERA was satisfied that the Market Participants had implemented controls to mitigate the risk of the breach re-occurring.

On 22 July 2019, the ERA published a notice stating that it had found that AEMO breached the Market Rules when allocating Certified Reserve Capacity to two Market Participants. AEMO self-reported these breaches to the ERA in February and May 2018 and provided

breach disclosures on its website.⁷ These breaches were discussed in more detail in the Wholesale Electricity Market Rules and Gas Services Information Rules Compliance Report – 1 January 2019 to 30 June 2019.⁸

2.5 Stakeholder engagement and reports

On 3 December 2019 the ERA published its report to the Minister for Energy on its own compliance with the Market Rules and Market Procedures between 1 July 2018 and 30 June 2019 meeting the requirements of Market Rule 2.14.5A.

The ERA's compliance with the Market Rules and Market Procedures between 1 July 2018 and 30 June 2019 was audited by 2020 Global, an independent auditor engaged by the ERA.

The auditor found that the ERA complied with the Market Rules and Market Procedures, other than for two matters⁹ previously disclosed by the ERA concerning the inadvertent release of confidential information. The audit concluded that there were no adverse consequences from these disclosures. The ERA has implemented additional controls to mitigate the risk of non-compliance.

2.6 Other matters

Recent Rule Changes may affect Market Participants' compliance obligations. A brief description of the requirements for two recent Rule Changes is below.

On 26 August 2019, the Rule Change Panel published the Final Report for Outage Planning Phase 2 – Outage Process Refinements (RC_2013_15).¹⁰ This Rule change will commence on 1 February 2020. Amongst other amendments, the Outage Planning Phase 2 Rule Change seeks to clarify how unavailable or possibly unavailable capacity should be treated in Balancing Submissions. These clarifications include the addition of new clauses in chapter 7A.2 as well as changes to clause 7A.2.4. The changes seek to clearly specify how available and unavailable capacity should be reported in Balancing Submissions. The Rule Change Panel's Final Rule Change Report: Outage Planning Phase 2 – Outage Process Refinements (RC_2013_15) details these new obligations.

Rule Change Removal of Resource Plans and Dispatchable Loads (RC_2014_06) commenced in this reporting period. This Rule Change resulted in material changes to market functions that may affect Market Participants including:

- Removing the requirement to submit Resource Plans that created an unnecessary administrative burden on participants and increased market costs.
- Extending the Balancing Horizon by bringing the start time forward to 1:00 PM from 6:00 PM, and extending the STEM submission close time from 9:50 AM to 10:50 AM.

⁷ Australian Energy Market Operator, 'Certification of Reserve Capacity', ([online](#)) [accessed 14 January 2020].

⁸ Economic Regulation Authority, 'Wholesale Electricity Market Rules and Gas Services Information Rules Compliance Report – 1 January 2019 to 30 June 2019', ([online](#)) [accessed 14 January 2020].

⁹ Economic Regulation Authority, 'ERA non-compliance reports under GSI and Market Rules', ([online](#)) [accessed 14 January 2020].

¹⁰ Rule Change Panel, 'Final Rule Change Report: Removal of Resource Plans and Dispatchable Loads (RC_2013_15) Standard Rule Change Process', ([online](#)) [accessed 14 January 2020].

- Removing the Dispatchable Load Facility Class.

Further information on these changes can be found in the Rule Change Panel's Final Rule Change Report:¹¹ Removal of Resource Plans and Dispatchable Loads (RC_2014_06).

3. Report on Electricity Review Board matters

This section details the matters required to be reported on under clause 2.13.26 of the Market Rules and clause 167(1) of the GSI Rules for the reporting period. These matters are:

- a. Proceedings that have been brought before the Electricity Review Board.
- b. Findings of the Electricity Review Board on matters referred to them.
- c. Orders made by the Electricity Review Board.
- d. Civil penalties imposed by the ERA under clause 2.13.16(a) of the Market Rules or regulation 16 of the GSI Regulations, where the Electricity Review Board has not set these aside.

3.1 Proceedings brought before the Electricity Review Board

On 3 April 2019, the ERA published a notice¹² advising that it had finalised its Investigation into Synergy's pricing behaviour in the balancing market. The ERA applied to the Electricity Review Board for an order of contravention of clause 7A.2.17 of the Market Rules pursuant to regulation 32(1) of the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* (WA). This application is recorded as Application 1 of 2019 by the Western Australian Energy Disputes Arbitrator.¹³

The Attorney General appointed Mr Scott Ellis as the Presiding member of the Electricity Review Board on 29 October 2019. In accordance with section 51(1) of the *Energy Arbitration and Review Act 1998* (WA), the Electricity Review Board was constituted when Mr Ellis appointed Mr Warren Harding and Ms Sally McMahon as the Expert members on 15 November 2019.

No other matters have been brought before the Electricity Review Board during this reporting period.

3.2 Findings of the Electricity Review Board

The Electricity Review Board did not decide on any matters during the reporting period.

¹¹ Rule Change Panel, 'Final Rule Change Report: Removal of Resource Plans and Dispatchable Loads (RC_2014_06) Standard Rule Change Process', ([online](#)) [accessed 14 January 2020].

¹² Economic Regulation Authority, 'Notice – Investigation into Synergy's pricing behaviour', ([online](#)) [accessed 14 January 2020].

¹³ Western Australian Energy Disputes Arbitrator, 'Application no 1 of 2019', ([online](#)) [accessed 14 January 2020].

3.3 Orders made by the Electricity Review Board

A directions hearing was held on 16 December 2019 and the Electricity Review Board published orders¹⁴ for the proceedings on 20 December 2019.

The date for the next directions hearing was scheduled for 20 May 2020 at 10:00am Western Standard Time.

3.4 Civil penalties imposed by the ERA

The Electricity Review Board imposed no civil penalties during the reporting period.

¹⁴ Order by Western Australian Electricity Review Board [No. 1 of 2019](#).