

Market Procedure

Monitoring Protocol

Effective 27 July 2020

Economic Regulation Authority

WESTERN AUSTRALIA

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Version History

Version	Effective Date	Summary of Changes
1.0	12 September 2006	Market Procedure as at Market Start
2.0	17 October 2008	The Independent Market Operator made changes to the procedure resulting from PC_2008_10
3.0	19 September 2016	Amendments made under clause 1.17.1 of the Wholesale Electricity Market Rules (transitional provision) to reflect the transfer of the Independent Market Operator's compliance and enforcement functions to the Economic Regulation Authority.
4.0	1 July 2017	A full review of this Market Procedure was carried out by the Economic Regulation Authority after transfer of the compliance and enforcement function (Procedure Change EEPC_2017_01).
5.0	24 July 2020	Review and amendment of Market Procedure following Rule Change RC_2018_05 (Procedure Change EEPC_2020_01).

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1 Background

The Monitoring Protocol sets out the processes by which the Economic Regulation Authority monitors Rule Participants' compliance with the *Wholesale Electricity Market Rules* (Market Rules) and Market Procedures.

The ERA is required to maintain and implement this Monitoring Protocol as a Market Procedure under clause 2.15.1 of the Market Rules. The ERA must comply with Market Procedures applicable to it pursuant to clause 2.9.7B of the Market Rules.

1.1 Interpretation

1.1.1 In this Monitoring Protocol, unless the contrary intention is expressed:

- (a) terms used in this procedure have the same meaning as those given in the Market Rules (made pursuant to the *Electricity Industry (Wholesale Electricity Market) Regulations 2004*);
- (b) to the extent that this procedure is contrary or inconsistent with the Market Rules, the Market Rules shall prevail to the extent of the inconsistency;
- (c) a reference to the Market Rules or Market Procedures includes any associated forms required or contemplated by the Market Rules or Market Procedures;
- (d) words expressed in the singular include the plural and vice versa; and
- (e) the following terms have the following meanings:

“**Market Regulations**” means the *Electricity Industry (Wholesale Electricity Market) Regulations 2004*;

“**Regulation**” means a regulation in the Market Regulations.

1.1.2 References to particular Market Rules within this Monitoring Protocol are current as of 30 March 2020.

1.2 Purpose

1.2.1 Clause 2.15.2 of the Market Rules requires the Monitoring Protocol to set out how the ERA will implement its obligations under the Market Rules to monitor Rule Participants' behaviour for compliance with the Market Rules and Market Procedures.

1.2.2 Clause 2.15.3 of the Market Rules requires the Monitoring Protocol to specify:

- (a) the Economic Regulation Authority's monitoring processes for assessing compliance with the Market Rules and Market Procedures by Rule Participants;
- (b) [Blank];
- (c) a process for Rule Participants to report alleged breaches of the Market Rules or Market Procedures;

- (d) processes for investigations into alleged breaches of the Market Rules or Market Procedures;
 - (e) guidelines for the Economic Regulation Authority when issuing warnings about alleged breaches of the Market Rules or Market Procedures to Rule Participants under clause 2.13.10(c); and
 - (f) the procedure for bringing proceedings in respect of Category B or C Market Rule breaches before the Electricity Review Board.
- 1.2.3 The ERA also has functions to monitor the effectiveness of the Wholesale Electricity Market under clause 2.16 of the Market Rules. This procedure does not include any protocols for the ERA's functions under clause 2.16 of the Market Rules.

1.3 Compliance Contact Points

- 1.3.1 The contact details for the ERA in relation to its compliance and enforcement functions under the Market Rules are:

Attention: Assistant Director, Compliance and Enforcement, Energy Markets

Phone: (08) 6557 7900

Email: market.compliance@erawa.com.au

Post: PO Box 8469, PERTH BC WA 6849

- 1.3.2 The Market Rules provide that as part of its compliance functions, the ERA may require information from and meet with Rule Participants in relation to compliance matters. To assist with these processes, the ERA may from time to time make a written request to Rule Participants to nominate a primary contact person for all the organisation's Market Rule and Market Procedure non-compliance related matters. The Rule Participant may be requested to provide the following contact details to the ERA via email to market.compliance@erawa.com.au:

Name of person:

Position title:

Organisation (if agent for Rule Participant):

Rule Participant:

Telephone Number/s:

Email address:

1.4 Compliance Approach

- 1.4.1 The ERA's approach is aimed at encouraging compliance by Rule Participants with the Market Rules and Market Procedures with the target of achieving high levels of compliance. Under this approach the ERA will seek to:
- (a) assist Rule Participants to understand their obligations, noting that the responsibility for meeting compliance obligations rests with the individual participant;
 - (b) identify potential breaches, investigate these and identify any subsequent education or other prevention or enforcement actions required;
 - (c) 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;
 - (d) ensure that its compliance responses to breaches are proportionate to the circumstances of the non-compliant behaviour;
 - (e) apply a risk based approach to its compliance activities, including its monitoring processes, investigation processes and enforcement actions.
- 1.4.2 The risk based approach referred to in paragraph 1.4.1(e) of this document involves assessing the compliance risk associated with an obligation or set of obligations under the Market Rules and/or Market Procedures. These assessments will assist in determining the focus, priority and outcomes of our compliance activities (e.g. setting monitoring targets, prioritising investigations and determining the actions that the ERA considers appropriate in response to breaches).

2 Monitoring

2.1 Monitoring Processes

- 2.1.1 The ERA is required to monitor Rule Participants' compliance with the Market Rules and Market Procedures (clause 2.2A.1(a) and 2.13.2 of the Market Rules). The ERA is required to have processes and systems in place to enable it to monitor Rule Participants' behaviour in accordance with the Monitoring Protocol (clause 2.13.3 of the Market Rules) and the Monitoring Protocol is required to specify these processes (clause 2.15.3(a) of the Market Rules).
- 2.1.2 The ERA will monitor Rule Participants' compliance using various methods, including but not limited to:
- Market intelligence: Assessing information received from stakeholders that may identify matters requiring further investigation;
 - Market monitoring: Analysing market related information, data and documents, including that provided by AEMO, through a suite of tools and systems (e.g. bidding and pricing information, dispatch data, outage data etc) which may identify potential areas of non-compliance;

- Targeted compliance activities: Targeted reviews of Rule Participants may be carried out to assess compliance with specific Market Rule obligations or groups of obligations, or areas identified as being of particular compliance concern, or where monitoring is required because the Market Rules provide for special arrangements; and
 - Reporting: AEMO (including in its capacity as System Management) has obligations to notify the ERA, subject to certain exceptions, if it becomes aware of an alleged breach of the Market Rules or Market Procedures. Additionally Rule Participants and other stakeholders may report alleged non-compliant behaviour, including voluntary reports of the Rule Participant's own non-compliant behaviour.
- 2.1.3 Market related data, information and documents (materials) are made available to the ERA by AEMO pursuant to clause 2.13.3A of the Market Rules to assist the ERA to monitor Rule Participants' behaviour for compliance with the Market Rules and Market Procedures.
- 2.1.4 The ERA publishes on its website a [list](#) of the types of materials that is periodically provided by AEMO as required by clause 2.13.3B(a) of the Market Rules.
- 2.1.5 The ERA may request AEMO provide additional materials than the types of material periodically provided. Where the ERA requests information from AEMO that is not one of the types periodically provided and the materials relate to a specific Rule Participant (or group of Rule Participants), the ERA is required to provide notification to the relevant Rule Participant(s) under clause 2.13.3B(b) of the Market Rules.
- 2.1.6 The ERA will apply a risk based approach to prioritise the focus of its monitoring activities. This approach will consider the consequence and/or likelihood of a breach/es of the relevant obligations proposed to be monitored including possible effects on:
- Rule Participants' finances;
 - Power System Security and Power System Reliability;
 - health and safety;
 - market operations;
 - other Rule Participants;
 - electricity consumers;

The ERA will also consider Rule Participants' history of compliance with the obligation/s under consideration.

- 2.1.7 The information collected through the methods set out in paragraph 2.1.2 of this document will be assessed to identify potential areas of non-compliance that warrant further investigation.
- 2.1.8 The ERA will collect information from Rule Participants as required to carry out its compliance monitoring activities.
- 2.1.9 Where the ERA has identified an alleged breach of the Market Rules following monitoring or surveillance activities, the ERA will provide notice to that Rule Participant in accordance with step 4.1.7(b). Where a breach has been alleged, a Rule Participant may make a submission to the ERA to provide information to the ERA to explain or provide context for the alleged non-compliant behaviour prior to the ERA reaching a decision on whether the Rule Participant has breached the Market Rules.
- 2.1.10 Submissions referred to in paragraph 2.1.9 of this document must be made via email to:

Market.compliance@erawa.com.au

If email is not possible, then notification may be sent by registered post to:

PO Box 8469, Perth BC WA 6849

2.2 AEMO's Role (including in its capacity as System Management) to Support ERA in Monitoring Compliance

- 2.2.1 AEMO must support the ERA's function to monitor compliance (clause 2.13.9A of the Market Rules). AEMO (including in its capacity as System Management) supports the ERA's compliance monitoring processes by:
- (a) providing access to market data, including through the use of and/or access to AEMO systems to the extent permitted by law; and
 - (b) notifying the ERA if it becomes aware of an alleged breach of the Market Rules or Market Procedures in accordance with clauses 2.13.6A (subject to the exceptions referred to in clause 2.13.6B), 2.13.8 and 2.13.9C of the Market Rules.
- 2.2.2 The Market Rules require AEMO to develop and implement a Monitoring and Reporting Protocol and seek the ERA's approval for that Monitoring and Reporting Protocol (clause 2.15.6A of the Market Rules). The purpose of AEMO's Monitoring and Reporting Protocol is to specify how AEMO (including in its capacity as System Management) will support the ERA's compliance monitoring role.

- 2.2.3 Rule Participants should refer to AEMO's Monitoring and Reporting Protocol for further information on AEMO's processes in relation to its support role.

3 Breach reporting

3.1 Reporting Processes for Breach Allegations

- 3.1.1 A Rule Participant may notify the ERA if it considers that it or another Rule Participant is in breach of the Market Rules or Market Procedures and may also provide evidence of the alleged breach (clause 2.13.4 of the Market Rules). The processes for this are required to be set out in this document (clause 2.15.3(c) of the Market Rules).
- 3.1.2 Any alleged breach notification must be in writing and contain:
- (a) the name of the Rule Participant and contact details for the person responsible for the notification;
 - (b) the name of the Rule Participant who is alleged to have breached the Market Rules or Market Procedures;
 - (c) the specific clauses in the Market Rules or Market Procedures alleged to have been breached;
 - (d) the dates and times on which the alleged breach occurred;
 - (e) a description of the reasons that the notifying Rule Participant has for considering a breach may have taken place, including any evidence of the alleged breach;
 - (f) if the breach is by the notifying Rule Participant, a description of the reasons for the breach, including any mitigating circumstances and any proposed remedies;
 - (g) details of any known impact to the market or Rule Participants;
 - (h) any other information considered relevant.
- 3.1.3 Notifications of alleged breach matters referred to in paragraph 3.1.2 of this document above should be sent by email to:
- Email: market.compliance@erawa.com.au
- If email is not possible, then the notification may be sent via registered post to:
- Post: PO Box 8469, PERTH BC WA 6849.
- 3.1.4 On receiving a written notification under paragraph 3.1.2 of this document, the ERA will record the details in its compliance monitoring register, as referred to in section 6.1 of this document.

- 3.1.5 The ERA will provide written acknowledgement to the reporting party within three business days of receipt of any written notification of an alleged breach.
- 3.1.6 When investigating the alleged breach in accordance with the processes set out in section 4.1 of this document, the ERA will consider whether it is appropriate to disclose to the Rule Participant alleged to have committed the breach the identity of the Rule Participant reporting the alleged breach. In exercising this discretion the ERA will take into consideration any request for anonymity from the party alleging the breach.

4 Investigations

4.1 Investigation Process

- 4.1.1 The ERA will generally become aware of an alleged breach of the Market Rules and/or Market Procedures through the monitoring processes referred to in paragraph 2.1.2 of this document.
- 4.1.2 For the avoidance of doubt, the term 'alleged breach' and its other grammatical forms when used in this section 4, refers to matters where the ERA forms the view that it has sufficient information to reasonably suspect a breach of the Market Rules and/or Market Procedures has occurred and the matter can therefore be escalated for investigation.
- 4.1.3 Prior to making the assessment referred to in paragraph 4.1.2 of this document, the ERA may undertake detailed analysis, including examining data and other information available, and/or seeking further information from Rule Participants. This analysis may also include monitoring of specific or general behaviours by Rule Participants.
- 4.1.4 Where the ERA forms the view that a matter identified through its monitoring processes is not an alleged breach, then the investigation processes set out in this document do not apply.
- 4.1.5 Where the ERA forms the view that a matter identified through its monitoring processes is an alleged breach of the Market Rules or Market Procedures, then upon becoming aware of this, the ERA is required to investigate the matter (clause 2.13.10 of the Market Rules).
- 4.1.6 The processes for investigating alleged breaches are required to be set out in this document (clause 2.15.3(d) of the Market Rules).
- 4.1.7 The general investigation process will usually involve the following phases and steps:
- (a) Assessment phase: This phase covers the following steps:
- The ERA will record details of the matters alleged to be in breach in its compliance monitoring register;
 - The ERA will determine the priority of the investigation by carrying out an initial compliance risk assessment. This will involve assessing the potential

consequence of the alleged breach and/or likelihood of re-occurrence to form a view on whether the matter should be investigated as a priority over other alleged breach matters.

(b) Investigation phase: This phase covers the following steps:

- The ERA will notify the Rule Participant alleged to be in breach and seek information. (Note, the timing of this notification will depend on whether such notification could prejudice the investigation);
- The ERA will gather evidence from relevant parties (e.g. documentary evidence, oral evidence etc) to establish the facts of the matters alleged to be in breach;
- The evidence gathered will be recorded and stored appropriately;
- If the ERA identifies that the Rule Participant has engaged in a breach of the Market Rules, the Rule Participant alleged to be in breach will be given notice of the ERA's preliminary findings including the reasons / rationale for these findings, once formed, and will be given the opportunity to make a submission in response to these preliminary findings;
- The ERA will consider appropriate timeframes when requesting a response to preliminary findings. Longer timeframes will be given to Rule Participants where a matter is complex. In some instances, a matter may require urgent redress (e.g. a behaviour that could result in a risk to the safety of a person) and minimum timeframes may not be appropriate. The ERA will reasonably consider extensions to these timeframes where sufficient justification has been made by the Rule Participant. Amendments to standard time frames will be considered on a case by case basis and assessed by exception;
- During the course of the investigation the ERA may meet with the Rule Participant alleged to be in breach (this may occur at any stage during the investigation process);
- Any further information provided by the Rule Participant alleged to be in breach will be taken into consideration when finalising the investigation;
- The investigation findings will be documented in an internal investigation report.

(c) Where the ERA makes an interpretation of a term that is undefined by the Market Rules, the ERA may publish a definition of that term or have that definition considered by the Rule Change Panel for inclusion in the Market Rules. Outcome phase: This phase covers the following steps:

- On conclusion of an investigation, the ERA will notify the parties of the outcome of the investigation, including whether a breach has occurred and the compliance response that the ERA considers appropriate;
- Where the ERA's compliance response recommends the implementation of any actions by the Rule Participant alleged to be in breach, the ERA may follow up on the progress of implementation of these actions;
- Where applicable, the ERA will commence enforcement actions;

- The ERA will record the outcomes of its investigations in its compliance monitoring register.
- 4.1.8 Note, the phases and steps identified above are intended as a general outline of the investigation process.
- 4.1.9 The ERA will apply its discretion in determining the most appropriate method to investigate any alleged breach, including the level of enquiries that need to be made and how they will be made, the extent to which it will investigate the matter and the compliance action that the ERA considers appropriate in response to the alleged breach.
- 4.1.10 For matters of a minor nature and/or that need to be dealt with expediently, a less formal approach may be used to investigate the matter (e.g. telephone enquiries) and potentially resolve the issues. For other matters, particularly complex matters, a formal detailed investigation approach may be applicable.
- 4.1.11 Each investigation will be carried out in a manner appropriate to the circumstances of the matters alleged to be in breach.

4.2 Investigation Powers

- 4.2.1 Clause 2.13.12 of the Market Rules provides that as part of an investigation the ERA may:
- (a) require information and records from Rule Participants; and
 - (b) conduct an inspection of a Rule Participant's equipment.
- 4.2.2 Clause 2.13.13 of the Market Rules requires Rule Participants to cooperate with an investigation of an alleged breach of the Market Rules or Market Procedures, including:
- (a) providing the ERA with any information requested in a timely manner; and
 - (b) allowing reasonable access to equipment for the purpose of an inspection.
- 4.2.3 At any time during the course of an investigation the ERA may meet with the Rule Participant on one or more occasions to discuss the alleged breach and actions to rectify it (clause 2.13.11 of the Market Rules).
- 4.2.4 Where the ERA requires information, records or access to equipment or seeks a meeting it will confirm the request in writing by email, facsimile or post to the person nominated as the primary compliance contact for the Rule Participant as provided under paragraph 1.3.2 of this document, or any other appropriate officer from the Rule Participant's organisation that the ERA considers appropriate. The ERA will indicate a reasonable timeframe within which the information and records should be provided.
- 4.2.5 The Rule Participant may request the ERA extend the timeframe to comply with the request referred to in paragraph 4.2.4 of this document in writing. The ERA

must consider the individual circumstances of the request and advise the Rule Participant of whether the extension has been granted, and if so details of the extension, and if not, the reasons for not granting the extension.

- 4.2.6 In the event that a Rule Participant does not cooperate with an ERA investigation, the ERA may appoint an independent person to investigate the matter and to provide a report or other documentation as required. The Rule Participant under investigation is liable for the costs, unless the ERA otherwise determines, and must assist the person undertaking the investigation (clause 2.13.14 of the Market Rules).
- 4.2.7 Where the ERA decides that, in the course of its investigation, it needs to execute a search warrant, it must follow the requirements set out in Part 5, Division 2 of the Market Regulations. These relate to:
- (a) authorisation of an officer or employee of the ERA, in accordance with Regulation 23;
 - (b) application for search warrants, in accordance with Regulation 24;
 - (c) announcements before entry, in accordance with Regulation 25;
 - (d) giving details of the warrant to the occupier, in accordance with Regulation 26;
 - (e) provision of copies of seized documents, in accordance with Regulation 27; and
 - (f) retention and return of seized documents, in accordance with Regulation 28.

4.3 Investigation Outcomes

- 4.3.1 At the conclusion of an investigation the ERA will make a determination on whether it reasonably believes that a breach has occurred.
- 4.3.2 Where the ERA determines that a breach has occurred, the ERA will consider the compliance action appropriate in response to the breach. The ERA has statutory compliance responses available to it under the Market Rules and the Market Regulations (e.g. warnings, Category A penalty notices or commencement of proceedings before the Electricity Review Board), and also administrative responses, such as providing education advice and seeking a voluntary compliance program.
- 4.3.3 In determining the appropriate compliance response referred to in paragraph 4.3.2, the ERA will apply a risk based approach to assess the compliance risk associated with the obligations determined to have been breached. The assessment will consider the consequence and/or likelihood of the breach/es including possible effects on:
- Market Participants' finances;
 - Power System Security and Power System Reliability;
 - health and safety;

- market operations;
- other Rule Participants;
- electricity consumers;

The ERA will also consider:

- the Rule Participant's history of compliance with the obligation/s under consideration;
- whether the behaviour is systemic, repetitive or ongoing;
- whether the breach was self-disclosed; any actions taken by the Rule Participant to address the breach;
- the Rule Participant's compliance processes;
- whether the non-compliant behaviour is deliberate.

4.3.4 Subject to paragraphs 4.3.5 and 4.3.6, at the conclusion of its investigation, the ERA will notify the Rule Participant alleged to be in breach of the outcome of the investigation. The notification must be in writing and include the following information:

- (a) the clauses of the Market Rules or Market Procedures alleged to be in breach;
- (b) a summary of the facts of the matters investigated;
- (c) the ERA's determination of whether a breach has occurred or not;
- (d) in the case where a breach has been determined, the reasons for the determination;
- (e) the compliance response that the ERA considers appropriate.

4.3.5 In some circumstances where the ERA's investigation has not substantiated the breach allegation, it may not be necessary to notify the Rule Participant alleged to be in breach, of the outcome. This is more likely to be the case where there has been no need to contact the party alleged to be in breach during the course of the investigation and/or the ERA determines that there is insufficient information to warrant investigation.

4.3.6 In circumstances where the ERA reasonably believes a breach has occurred and it commences proceedings before the Electricity Review Board, notification of these proceedings to the Rule Participant alleged to be in breach will occur as part of the process for these proceedings. In these circumstances the ERA has discretion not to provide the notification referred to in paragraph 4.3.4.

4.3.7 The ERA may also notify the Rule Participant who reported the breach of the investigation outcome, where that party is different to the Rule Participant alleged

to be in breach, if the ERA considers this to be appropriate and permitted under the confidentiality provisions of the Market Rules.

- 4.3.8 Table 1 below provides guidance on the potential investigation outcomes, available compliance responses and when these may apply. This information should be read in conjunction with the factors set out in paragraph 4.3.3 above. Table 1 is a guide only – each matter investigated must be considered on a case by case basis having regard to the individual circumstances applicable to that matter. The ERA will aim to ensure that investigation outcomes arrived at are fair, consistent and proportionate to the circumstances of the non-compliant behaviour.

Table 1: Potential Investigation Outcomes

Determination	Compliance Response	Circumstances where the Compliance Response may be applicable
No breach found	No further action	For matters where the investigation has concluded that there is insufficient evidence to support a breach determination.
No breach found	Education advice	For matters where the investigation has concluded that there is insufficient evidence to support a breach determination but as part of the investigation the ERA identified opportunities for improvements to processes and/or controls, or other matters where there is a need to provide education and guidance to assist the participant.
Breach found	No further action	For matters where the breach had little to no consequence, actions were taken to rectify the breach in a timely manner and actions have been implemented to reduce the risk of recurrence of the breach.
Breach found	Education advice	For matters where the breach had little to no consequence but there is a need to provide education and guidance to assist the participant meet its obligations and prevent future breaches. Follow up action may be necessary to ensure the guidance provided is followed through by the participant.
Breach found	Compliance program	<p>For matters where there is a reasonable likelihood of future breaches and actions are required to be implemented by the participant to prevent this.</p> <p>The compliance program will seek to document the agreed actions and associated timelines.</p> <p>In some cases the compliance program will form part of other enforcement action, such as the issue of a warning or orders associated with civil penalty proceedings. In other cases, the compliance program will represent a voluntary program agreed between the participant and the ERA.</p>
Breach found	Warning	For matters where there are material consequences associated with the breach and/or there is a reasonable likelihood of future breaches, and the non-compliant behaviour warrants a formal reprimand.
Breach found	Civil penalties	<p>For matters where there are material consequences associated with the breach and/or there is a reasonable likelihood of future breaches, and the non-compliant behaviour warrants a monetary penalty.</p> <p>The Market Regulations prescribe different categories of civil penalties:</p> <ul style="list-style-type: none"> • Category A civil penalties - The ERA may issue a notice demanding payment of the penalty; • Category B and C civil penalties – The ERA may bring proceedings before the Electricity Review Board (refer below).
Breach found	Electricity Review Board proceedings	<p>For matters where there are material consequences associated with the breach and/or there is a reasonable likelihood of future breaches, and the non-compliant behaviour warrants formal orders from the Electricity Review Board.</p> <p>The Market Regulations provide that if the ERA considers that a participant has contravened a provision of the Market Rules it may apply to the Electricity Review Board for one or more orders as set out in Regulation 33 (refer to paragraph 5.3.3 of the Monitoring Protocol).</p>

5 Enforcement

5.1 Warnings

- 5.1.1 This Monitoring Protocol must set out guidelines for the ERA when issuing warnings (clause 2.15.3(e) of the Market Rules).
- 5.1.2 Where the ERA reasonably believes that a breach of the Market Rules has taken place, it may issue a warning to the Rule Participant (clause 2.13.10(d) of the Market Rules). Table 1 in section 4.3 above provides guidelines of circumstances where a warning may be an appropriate compliance response.
- 5.1.3 Where the ERA considers that a warning is appropriate it must issue the warning in writing. Clause 2.13.10(d) of the Market Rules requires the warning to set out:
- (a) the specific clause or clauses of the Market Rules or Market Procedures that are believed to have been breached;
 - (b) a full description of the behaviour considered to be non-compliant;
 - (c) a request for an explanation; and
 - (d) a request to rectify the behaviour at issue, including a timeframe that the ERA considers to be reasonable to accomplish the request.
- 5.1.4 There are likely to be cases where paragraphs 5.1.3(c) and/or 5.1.3(d) are not applicable as follows:
- (a) paragraph 5.1.3(c) would not be applicable where, through the investigation process referred to in section 4 of this Monitoring Protocol, the ERA has already elicited an explanation from the participant prior to issuing any warning;
 - (b) paragraph 5.1.3(d) would not be applicable where the behaviour has already been rectified prior to the issue of any warning;
- and in these circumstances the warning letter will note the above and not re-request this information.
- 5.1.5 The ERA may provide the warning by email, facsimile or post to the person nominated as the primary contact for the Rule Participant under paragraph 1.3.2 or alternatively to any other appropriate officer of the Rule Participant as the ERA considers appropriate.
- 5.1.6 Subject to paragraph 5.1.4, the ERA must specify in the warning the timeframe within which the Rule Participant is required to provide the explanation referred to in 5.1.3(c). The Rule Participant is required to provide the explanation within the specified timeframe. The explanation is required to be in writing and may be provided to the ERA by email, facsimile or post using the contact details provided in paragraph 1.3.1.
- 5.1.7 The Rule Participant may request the ERA to extend the timeframe to provide the explanation referred to in paragraph 5.1.3(c) in writing. The ERA must consider the individual circumstances of the request and advise the Rule Participant of whether

the extension has been granted, and if so details of the extension, and if not, the reasons for not granting the extension.

- 5.1.8 On receipt of a response to a warning from the Rule Participant, the ERA must record this in its record keeping system as soon as practicable and note that a response has been received in the compliance monitoring register (clause 2.13.10(e) of the Market Rules).

5.2 Civil Penalty Provisions

- 5.2.1 Regulation 30 of the Market Regulations deems certain Market Rules as “civil penalty provisions”. In Schedule 1 to the Market Regulations, these provisions have been allocated a category (A, B or C) and maximum penalty amounts payable for a breach. The Regulations are available on the State Law Publisher website at: www.slp.wa.gov.au.

- 5.2.2 Category A civil penalty provisions:

If as a result of an investigation, the ERA decides that a breach of a Category A provision has occurred, it may issue a penalty notice in accordance with the Market Regulations (clause 2.13.16(a) of the Market Rules).

- 5.2.3 The penalty notice referred to in section 5.2.2 must:

- (a) be in writing;
- (b) state the name and address of the Market Participant;
- (c) state that the notice is given under Regulation 31 of the Market Regulations;
- (d) specify the category A civil penalty provisions considered to have been contravened;
- (e) provide details of the contravention, including the act or omission that the ERA considers constitutes the contravention;
- (f) specify the amount of the civil penalty;
- (g) inform the participant that the participant may apply to the Electricity Review Board for review of the ERA’s decision to demand the civil penalty;
- (h) contain a statement informing the participant that if after 28 days from receiving the notice:
 - i. payment is not made; or
 - ii. an application has not been made to the Electricity Review Board for review of the ERA’s decision to impose the penalty;

the ERA may apply to the Electricity Review Board for an order for the payment of a penalty (Regulation 31(5)).

- 5.2.4 A Rule Participant issued with a penalty notice may seek review by the Electricity Review Board of the ERA's decision to issue the notice in accordance with the Market Regulations (clause 2.13.17 of the Market Rules).
- 5.2.5 Where the ERA has made an application to the Electricity Review Board in the circumstances referred to in section 5.2.3(h), the Electricity Review Board may make an order that the participant pay the civil penalty if:
- (a) the ERA made the demand in accordance with the Market Regulations;
 - (b) the participant has not paid the civil penalty; and
 - (c) the participant has not applied to the Electricity Review Board for review of the ERA's decision to demand the amount.
- 5.2.6 In accordance with Regulation 37, any penalty payments received by AEMO must be distributed in accordance with the Market Rules. If the Market Rules do not provide for distribution of civil penalty amounts, the penalty payments will be credited to the Consolidated Account.
- 5.2.7 If the ERA decides that a breach has not occurred in relation to a Category A civil penalty, the ERA will notify the Rule Participant and the complainant, if any, of its decision (clause 2.13.16 of the Market Rules).
- 5.2.8 Category B and C civil penalty provisions:
- The Monitoring Protocol must specify the procedure for bringing proceedings in respect of Category B or C Market Rule breaches before the Electricity Review Board (clause 2.15.3(f) of the Market Rules).
- 5.2.9 If as a result of an investigation, the ERA decides that a breach of a Category B or Category C Market Rule has occurred it may bring proceedings before the Electricity Review Board (clause 2.13.18 of the Market Rules). The procedure for bringing proceedings before the Electricity Review Board is set out in section 5.3 of this Monitoring Protocol.

5.3 Electricity Review Board Proceedings

- 5.3.1 Regulation 32(1) provides that where the ERA considers that a Rule Participant has contravened a provision of the Market Rules, it may apply to the Electricity Review Board for one or more orders under Regulation 33.
- 5.3.2 The application referred to in paragraph 5.3.1 must be in writing and set out:
- (a) the ERA as the applicant;
 - (b) the provision of the Market Regulations under which the ERA is making the application;
 - (c) provide the details of the contravention of the Market Rules that the ERA considers has occurred, including the name and address of the participant alleged to have contravened the Market Rules; and

(d) specify the nature of the order sought

(Regulation 39).

5.3.3 The ERA may apply for, and the Electricity Review Board may make, one or more of the following orders under Regulation 33(1):

(a) where the provision is a civil penalty provision, an order that the participant pay to AEMO an amount that does not exceed the maximum civil penalty prescribed in Schedule 1 of the Market Regulations;

(b) an order that the participant cease within a specified timeframe, the act or omission constituting the contravention;

(c) an order that the participant take action or adopt a practice to remedy the contravention or prevent the recurrence of the contravention;

(d) an order that the participant implement a specified program for compliance with the Market Rules;

(e) an order suspending the participant's registration or any other specified right under the Market Rules for a specified period;

(f) an order that the participant's Facility or Facilities be disconnected;

(g) an order that the participant's registration be cancelled.

5.3.4 The processes governing proceedings brought before the Electricity Review Board for matters under regulation 33 are set out in Part 7 of the Market Regulations and Part 6 Division 2 of the *Energy Arbitration and Review Act 1998*.

5.3.5 The ERA may enforce an order of the Electricity Review Board through the Supreme Court (Regulation 34).

6 Recording and Reporting

6.1 Compliance Monitoring Register

6.1.1 The ERA must maintain a compliance monitoring register to record the following information:

(a) Details of any alleged breaches of the Market Rules and Market Procedures that it identifies through its own monitoring activities;

(b) Details of any alleged breaches of the Market Rules and Market Procedures that AEMO (including in its function as System Management) has reported through to the ERA;

(c) Details of any alleged breaches of the Market Rules and Market Procedures notified by any other Rule Participant in accordance with section 3.1 of this protocol;

(d) The outcomes of its investigation for the matters above.

6.2 Reports of Electricity Review Board Proceedings

- 6.2.1 The ERA must release a report at least once every six months which provides a summary of:
- (a) proceedings brought before the Electricity Review Board, including any findings and orders by the Electricity Review Board; and
 - (b) Penalty Notices issued by the ERA for Category A breaches unless the ERA's decision has been set aside by the Electricity Review Board
- (clause 2.13.26 of the Market Rules).
- 6.2.2 The ERA may, but is not required to, release a report on:
- (a) any one or more matters concerning Category A provisions for which the ERA issued a penalty notice; or
 - (b) any one or more matters that have been referred to the Electricity Review Board,
- including the findings of the ERA and/or the Electricity Review Board, as applicable, and any sanctions imposed by the ERA or the Electricity Review Board (clause 2.13.28 of the Market Rules).
- 6.2.3 The ERA may release a report referred to in paragraph 6.2.2 where significant incidents arise warranting the release of a report prior to the next scheduled six monthly report referred to in paragraph 6.2.1.
- 6.2.4 Claims of confidentiality of information, in relation to information that may be published in the reports referred to in paragraphs 6.2.1 and 6.2.2, are to be considered by the ERA in accordance with Market Rule 10.2 relating to information confidentiality (clause 2.13.30 of the Market Rules).

6.3 Report to Minister - AEMO's Compliance

- 6.3.1 The ERA must provide to the Minister a report on AEMO's compliance with the Market Rules and Market Procedures annually following the process outlined in clauses 2.14.5B to 2.14.5D of the Market Rules. The report will contain:
- (a) results of any audits performed; and
 - (b) results of any investigations undertaken.

6.4 Report to Minister - ERA's Compliance

- 6.4.1 The ERA must annually provide a report to the Minister on its compliance with the Market Rules and Market Procedures (clause 2.14.5A of the Market Rules). The ERA will ensure that it uses appropriate processes to prepare this report, which may include the use of independent auditors together with information gathered from internal compliance activities, as well as any information it receives from external parties concerning the ERA's compliance.