Economic Regulation Authority

Offer construction guideline and trading conduct guideline

Second draft report

November 2024

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Acknowledgement of Country

At the ERA we value our cultural diversity and respect the traditional custodians of the land and waters on which we live and work.

We acknowledge their continuing connection to culture and community, their traditions and stories. We commit to listening, continuously improving our performance and building a brighter future together.

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Invitation to make submissions

Submissions are due by 4:00 pm WST, Monday 2 December 2024

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

We would prefer to receive your comments via our online submission form https://www.erawa.com.au/consultation

You can also send comments through:

Email: publicsubmissions@erawa.com.au
Post: Level 4, Albert Facey House, 469 Wellington Street, Perth WA 6000

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

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

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Contents

List of appendices

Executive summary

The Economic Regulation Authority is conducting a second round of consultation on proposed changes to the Offer Construction Guideline and Trading Conduct Guideline, which set out the requirements for market participants' trading and bidding behaviour in the Wholesale Electricity Market (WEM).

This second round of consultation is required to account for further changes made to the WEM Rules, that are beyond the scope originally consulted on by Energy Policy WA (EPWA) earlier this year.

The Wholesale Electricity Market operates under the *Electricity Industry Act 2004*, *Electricity Industry (Wholesale Electricity Market) Regulations 2004*, and WEM Rules.[1,2,3]

Market participants operating in the WEM must comply with the trading obligations specified in the WEM Rules. To assist market participants' understanding of their obligations, the WEM Rules require the Economic Regulation Authority to develop and maintain an Offer Construction Guideline (OCG) and a Trading Conduct Guideline (TCG).[4]

The ERA has a broad function to monitor the market for compliance with the WEM Rules and investigate behaviour that it considers the behaviour has resulted in the market not functioning effectively.[5] The OCG and TCG inform participants of the types of conduct and indicators of non-compliance the ERA will monitor.

The obligation to comply is binding on all participants in the Short-Term Energy Market and Real-Time Market, which includes the energy and the Frequency Co-optimised Essential System Services (FCESS) markets.[6,7,8]

In May 2024, EPWA commenced a review of the framework for FCESS to ensure it operates efficiently, and that power system security and reliability can be maintained at the lowest cost to consumers.[9]

On 9 August 2024, EPWA released an Exposure Draft outlining its proposed changes to the WEM Rules as a result of the FCESS Cost Review. EPWA has proposed several changes to market participants' trading obligations, such as removing the need to demonstrate that a

1 *Electricity Industry Act 2004* (WA), (online).

2 *Electricity Industry (Wholesale Electricity Market) Regulations 2004* (WA), (online).

3 Wholesale Electricity Market Rules (WA), 30 October 2024, (online).

4 Wholesale Electricity Market Rules (WA), 30 October 2024, rule 2.16D.1 (online).

5 Wholesale Electricity Market Rules (WA), 30 October 2024, rule 2.13.2 (online).

6 FCESS is a type of Essential System Services, which support the operation of the energy market and are required to maintain power system security and reliability. FCESS include Regulation, Contingency Reserve, and Rate of Change of Frequency Control Service. See: Wholesale Electricity Market Rules (WA), 30 October 2024, Chapter 11 (online).

7 STEM is a forward market operated by AEMO in which Market Participants can trade electricity supplementing their off-market agreements for supply of electricity. See: Wholesale Electricity Market Rules (WA), 30 October 2024, Chapter 6 (online).

8 Real-Time market allows AEMO to dispatch energy and FCESS services in real time as market participants' actual production and consumption may differ from their forward contracts. See: Wholesale Electricity Market Rules (WA), 30 October 2024, Chapter 7 (online).

9 Energy Policy WA, 29 May 2024, *Scope of Work for the Coordinator's Review of the Essential System Services Framework,* (online).

market participant had market power when formulating their offers.[10] Under EPWA' s proposed changes, market participants:

- Could not make an Irregular Price Offer that results in an inefficient market outcome, where an Irregular Price Offer is inconsistent with an Economic Price Offer. An Economic Price Offer is an offer which is not greater than the sum of all efficient variable costs of providing the market service, including all costs incurred under long-term take-or-pay fuel contracts.[11,12]
- Must avoid conduct that is false, dishonest, or has the purpose or the effect of distorting or manipulating prices in the WEM.[13]

In response, the ERA amended the OCG and TCG to align with these changes and published the revised documents and a draft report for stakeholder feedback. The ERA proposed:

- Removing references to market power and the WEM Rules that EPWA proposed to delete.
- Introducing new examples based on the ERA's experience in monitoring the WEM since October 2023.[14]
- Changing treatment of runways cost for Contingency Reserve Raise.[15]

The consultation concluded on 3 October 2024. The ERA received seven submissions, which are summarised in Appendix 4.

On 29 October 2024, EPWA gazetted its changes to the WEM Rules, some of which significantly differ from its initial proposal.[16]

These changes include updates to the definition of an Economic Price Offer that now refers to "the Market Participant's reasonable expectation of (based on the information available at the time the offer was made) the sum of all efficient variable costs".[17] The ERA considers this a material change that warrants additional consultation. This second draft report also provides an opportunity to address other feedback from stakeholders on the first draft report.

This second draft report outlines the ERA's reasons for its proposed amendments to the guidelines, which include:

- Restoring the treatment of FCESS runway costs that was removed in the first draft report.
- Restructuring of the OCG for easier navigation.

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[10] Energy Policy WA, 9 August 2024, *FCESS Cost Review – Exposure Draft, Proposed Wholesale Electricity Market (WEM) Amending Rules*, Part 2, (online).

[11] Energy Policy WA, 9 August 2024, *FCESS Cost Review – Exposure Draft, Proposed Wholesale Electricity Market (WEM) Amending Rules*, Part 2, (online).

[12] Efficient Variable Cost (EVC) is defined in the OCG. Generally, the EVC is the cost that relates to the production of electricity or the relevant FCESS service and varies depending on the level of production. The EVC can include some costs which are independent of the production levels, such as costs to start-up a plant. Revised Offer Construction Guidelines is available in Appendix 1. See: Economic Regulation Authority, 2024, Draft Offer Construction Guideline, (online).

[13] Wholesale Electricity Market Rules (WA), 30 October 2024, rule 2.16A.3 (online).

[14] New market commenced on 1 October 2023.

[15] Contingency Reserve Raise is a type of FCESS service which operates during times of significant loss of generation to restore frequency in the South West Interconnected System. It is measured in MW of response capability. See: Wholesale Electricity Market Rules, 30 October 2024, rule 3.9.5 (online).

[16] Government Gazette, 29 October 2024, No 131 of 2024, p. 2555 (online).

[17] Wholesale Electricity Market Amendment (FCESS Cost Review) Rules 2024, Rule 3.13, (online).

- Addressing EPWA's revised definition of an Economic Price Offer.

The need to conduct further consultation means that the ERA will not be able to publish its final OCG and TCG by 20 November 2024, when the WEM Rule changes come into effect. The ERA expects to complete its review by 31 January 2025.

Market participants are encouraged to contact the ERA if they require additional information about their compliance obligations in the interim.

1. Introduction

To ensure the WEM operates effectively, the WEM Rules establish the general trading obligations for market participants. Since the start of the new WEM in October 2023, these obligations have included:

- Offering prices that reflect only the costs that a market participant without market power would include in a profit-maximising price offer (WEM Rule 2.16A.1).
- Avoiding conduct that is false, dishonest, or has the purpose or the effect of distorting or manipulating prices in the WEM (WEM Rule 2.16A.3).

The obligations were binding on all participants in the Short-Term Energy Market (STEM) and Real-Time Market, including the FCESS and energy markets. The ERA monitors and enforces compliance with the WEM Rules.

In September 2023, the ERA published the OCG and the TCG to provide participants regulatory guidance on the general trading obligations. The TCG provided guidance about the conduct prohibited under the WEM Rules while the OCG concerned the price offer obligations in WEM Rule 2.16A.1, which deals with market power.[18] Rule 2.16A.2 states that for a breach of Rule 2.16A.1 to have occurred a market participant must have market power at the time of making the offers in question. Rule 2.16E.1 requires that a breach of Rule 2.16A.1 requires that an inefficient market outcome has occurred.

Concurrently, Rule 2.16C.5 requires that a market participant not make an Irregular Price Offer that results in an inefficient market outcome, where an irregular price offer is defined as a price that was inconsistent with the price that a Market Participant without market power would offer in a profit-maximising Real-Time Market for STEM offers (Rule 2.16C.6(c)) and the Real-Time-Market (Rule 2.16C.6(d)).

On 9 August 2024, EPWA proposed to change the WEM Rules, including deleting WEM Rules 2.16A.1 and 2.16A.2. In line with EPWA's Exposure Draft, the ERA updated the OCG and TCG and released its proposed amendments for comment.

The ERA received seven submissions about its proposed amendments to the guidelines. The main issues raised in the submissions relate to:

- The exclusion of the runway costs from energy offers. The runway cost represents price of procuring (1) the Contingency Reserve Raise (CRR) to cover loss of the largest energy supplier for a given interval and (2) additional Rate of Change of Frequency (RoCoF) control service if it would reduce the quantity of Contingency Reserve Raise and overall cost.[19] Runway costs are allocated to causers of contingencies operating in the interval, equivalent with the extent to which they have contributed to the procurement of CRR and additional RoCoF control service. In other words, the largest contingency on the network bears the highest runway cost.

- The requirement for independent expert advice contained in section 3.1 of the draft OCG. The section required for an independent expert advice to support the distribution of costs across time, output, and number of starts.

On 29 October 2024, EPWA gazetted changes to the WEM Rules that had several differences to the Exposure Draft. This includes a definition of an Economic Price Offer. Given the extent

[18] Wholesale Electricity Market Rules (WA), 30 October 2024, rule 2.16D.1, (online).

[19] RoCoF Control Service slows the rate of change of power system frequency and keeps it within safe limits.

of this change and other stakeholder feedback on the revised guidelines, the ERA is now proposing further updates to the OCG and TCG.

To conduct its review, the ERA must follow process stipulated in the WEM Rules. This process is outlined in section 1.1.

This report is organised as follows:

- The rest of Chapter 1 summarises changes to the WEM Rules and the process to update the guidelines under the WEM Rules.
- Chapter 2 explains the scope of the ERA's review of the guidelines.
- Chapter 3 outlines proposed changes to the OCG.
- Chapter 4 outlines proposed changes to the TCG.
- The amended guidelines are provided in Appendices 1 (OCG) and 2 (TCG).
- Appendix 4 contains copies of stakeholder submissions.
- Appendix 3 summarises stakeholder feedback and the ERA's responses.

1.1 Updating the guidelines

The ERA can amend the guidelines at any time following the process specified in the WEM Rules.[20]

The WEM Rules require the ERA to publish on its website the following:[21]

- A draft report containing a copy of the proposed amendments to the guidelines, as applicable, and a request for submissions.
- The closing date for submissions, which must be no earlier than four weeks after the date of publication of the draft report.
- A copy of all submissions received. If a submission contains information that the ERA reasonably considers to be confidential, the ERA may redact that information to the extent it considers appropriate.

Following the closing date for submissions, the ERA must publish a final report on its website containing the following:[22]

- The amendments to the guidelines.
- The reasons for the amendment to the guidelines.
- A summary of any submission received by the ERA on the draft report that were received within the time specified, and any late submissions the ERA has decided to consider.
- The ERA's responses to the issues raised in those submissions.
- Any other matters the ERA considers relevant to the amendments to the guidelines.
- The date that the amendments to the guidelines will commence.

[20] Wholesale Electricity Market Rules (WA), 30 October 2024, rule 2.16D.2, (online).

[21] Wholesale Electricity Market Rules (WA), 30 October 2024, rule 2.16D.3 (online).

[22] Wholesale Electricity Market Rules (WA), 30 October 2024, rule 2.16D.4 (online).

1.2 WEM Rule changes

As part of its Exposure Draft, EPWA proposed several amendments to the market participants obligations under the WEM Rules.

These amendments would change the ERA's process for determining whether an Irregular Price Offer occurred, by:

- Deleting WEM Rule 2.16A.1, which requires market participants to offer prices reflecting only the costs that a market participant without market power would include in a profit-maximising price offer.
- Removing the existing requirement in the WEM Rule 2.16A.2 for the ERA to infer if a market participant had market power at the time of constructing offers in the Real-Time Market or STEM as part of its determination whether an Irregular Price Offer occurred.
- Amending the definition of an Irregular Price Offer by making a reference to the newly defined term Economic Price Offer.
- The WEM Rule 2.16C.5 will be the sole provision dealing with offers into the market. The rule prohibits making Irregular Price Offers which lead to inefficient market outcomes.[23]

These amendments were gazetted on 29 October 2024, largely as proposed in the Exposure Draft.[24,25]

The gazetted changes, however, do contain a different definition of an Economic Price Offer compared to the version in the Exposure Draft. The definition now includes reference to "the Market Participant's reasonable expectation of the sum of all efficient variable costs for the provision of the relevant Market Service" and that expectation should be based on the information available at the time the offer was made. [26] Table 1 below outlines both EPWA's Exposure Draft and the gazetted definition of an Economic Price Offer.

Further relevant changes to the WEM Rules include changing the name "Market Power Test" in WEM Rule 2.16C, introducing new WEM Rule 2.16C.8A, deleting WEM Rules 2.16C.11 and 2.16E.1, and amending WEM Rule 2.16E.2. Table 1 explains these changes in more detail.

Table 1: Comparison of WEM Rules changes between Exposure Draft and gazettal

Exposure Draft proposals	Gazetted changes to the WEM Rules
Deleting WEM Rule 2.16A.1.	As per Exposure Draft
Delete the WEM Rule 2.16A.2	As per Exposure Draft
Amend the definition of an Irregular Price Offer	As per Exposure Draft

23 Wholesale Electricity Market Rules (WA), 30 October 2024, rule 2.16C.5 (online).

24 Government Gazette, 29 October 2024, No 131 of 2024, p. 2555 (online).

25 Wholesale Electricity Market Amendment (FCESS Cost Review) Rules 2024, (online).

26 Wholesale Electricity Market Amendment (FCESS Cost Review) Rules 2024, Rule 3.13, (online).

Exposure Draft proposals	Gazetted changes to the WEM Rules
An Economic Price Offer means an offer that is not greater than the sum of all efficient variable costs for the provision of the relevant market service, including costs incurred under long-term take-or-pay contracts (Rule 2.16C.6A).	An Economic Price Offer is a price offered by a Market Participant, in its Portfolio Supply Curve or in a Real-Time Market Submission, which is not greater than the Market Participant's reasonable expectation (based on the information available at the time the offer was made) of the sum of all efficient variable costs for the provision of the relevant Market Service, including all costs incurred under long-term take-or-pay fuel contracts.
The ERA is required to investigate potential breaches in both STEM and real-time market to ensure that the prices offered were consistent with an Economic Price Offer and do not result in an inefficient market outcome.	As per Exposure Draft
Introducing new WEM Rule 2.16C.8A to ensure that the six-month timeframe for the ERA's determination of whether an Irregular Price Offer has occurred, and whether it has resulted in an inefficient market outcome, does not include the time market participants take to provide the ERA with information. This is to apply if the ERA requests information from a market participant under the WEM Rule 2.13.28 or a submission under the WEM Procedure: Monitoring Protocol.[27,28]	Rule 2.16C.8A has changed compared to the Exposure Draft. If a market participant makes a submission under the WEM Procedure: Monitoring Protocol and the ERA did not request information from the participant, the ERA's six-month timeframe will only be extended by two business days. The rule no longer makes specific provision for the ERA requesting a submission from a market participant.
Remove WEM Rule 2.16C.11 that is based on the to-be-deleted WEM Rule 2.16A.1	As per Exposure Draft
Remove WEM Rule 2.16E.1 which refers to the to-be-deleted WEM Rule 2.16A.1.	As per Exposure Draft
Amend WEM Rule 2.16E.2 to reflect provisions in WEM Rule 2.16C.6 under which the ERA investigates whether a price offer is an Irregular Price Offer.	Wording of Rule 2.16E.2 has slightly changed compared to the proposal in the Exposure Draft. The rule requires the ERA to notify a market participant of an outcome of an investigation and reasons for its decision if a price offered by a Market Participant "is not inconsistent with an Economic Price Offer", rather than "is not an Irregular Price Offer".

27 Economic Regulation Authority, 2024, *WEM Procedure: Monitoring Protocol*, (online).

28 Monitoring Protocol was revised due to EPWA's proposed changes. A copy of the revised Monitoring Protocol is available on the ERA's website (online).

Exposure Draft proposals	Gazetted changes to the WEM Rules
Change the name “Market Power Test” in Rule 2.16C to “Materiality Test”, as the current name does not accurately reflect the purpose of the test. The test in Rule 2.16C is not a assessment of market power but rather aims to oblige a material portfolio or material constrained portfolio to maintain data and records.[29,30]	As per Exposure Draft

29 Material portfolio refers to a set of one or more facilities (Portfolio) that meets or exceeds the 10 per cent threshold of the total net load available for supply of the network from all identified Portfolios. See: Wholesale Electricity Market Rules (WA), 30 October 2024, rule 2.16C.1, (online).

30 Material constrained portfolios are those registered facilities that have potential to hold localised market power due to network constraints resulting in energy uplift payments. See: Wholesale Electricity Market Rules (WA), 30 October 2024, rule 2.16C.2, (online).

2. Scope of the ERA's review

The ERA has a broad function to monitor the market for compliance with the WEM Rules and investigate behaviour if it considers the behaviour has resulted in the market not functioning effectively.[31]

The OCG and TCG inform participants of the types of conduct and indicators of non-compliance the ERA will be monitoring regarding the general trading obligations. Maintaining adequate records will assist market participants to demonstrate to the ERA that their conduct was consistent with the general trading obligations.[32]

In September 2024, the ERA published its updated versions of the OCG and TCG along with a first draft report. Its proposed changes primarily focused on implementing EPWA's proposed WEM Rule changes, but the ERA also made amendments to the guidelines to correct minor errors, improve market efficiency, and include new examples based on the ERA's experience monitoring the market since 1 October 2023.

In this second draft report, the ERA proposes further amendments to the guidelines addressing several issues raised by stakeholders on the first draft report, as well as differences in the final WEM Rule changes implemented by EPWA.

2.1 Matters outside the scope of this report

The ERA's WEM Procedure: Monitoring Protocol sets out how the ERA monitors, investigates, and enforces compliance.

In September 2024, the ERA published a procedure change proposal putting forward several changes to the Monitoring Protocol for stakeholder feedback. These changes were based on EPWA's proposed rule changes. The Monitoring Protocol is not affected by the issues discussed in this paper, and so there is no need for further consultation or amendments. This procedure change process has been completed.[33] Changes will come into effect on 20 November 2024.

[31] Wholesale Electricity Market Rules (WA), 30 October 2024, rule 2.13.2, (online).

[32] Wholesale Electricity Market Rules (WA), 30 October 2024, rule 2.16A.3 (online).

[33] Economic Regulation Authority, 2024, WEM Procedure: Monitoring Protocol, (online).

3. Offer Construction Guideline

The OCG outlines the general trading obligations of the market participants in the STEM and Real-Time Market, including the FCESS markets.

To form price offers consistent with Economic Price Offers in the WEM Rules, a Market Participant can offer a price up to their reasonable expectation of the sum of all efficient variable costs for the provision of energy or FCESS service, including costs incurred under long-term take-or-pay contracts. Consequently, the ERA proposes mostly limited changes summarised in section 3.1.

3.1 Proposed changes

3.1.1 Changes from first draft

The ERA has considered stakeholders' feedback and the final version of the amending WEM Rules. The ERA proposes the following further updates to the OCG:

- Restoring the current treatment of FCESS runway costs in energy offers as explained in section 3.1.2.
- Changing reference to "independent expert advice" (section 3.1 of the September 2024 draft of the OCG) to "able to be independently verified by applying good electricity industry practice" as the intent was not accurately reflected in the proposed amendment.
- Restructuring the OCG to make it easier for market participants to find relevant information. Changes include:
  - Chapter 1 includes mostly stylistic changes such as clarifying purpose of the guideline and including new "interpretation" section for various terms, definitions and references used in the OCG. The chapter also contains information in relation to ERA's monitoring and compliance activities relevant to offer construction, and record-keeping obligations for Market Participants.
  - Chapter 2 outlines a Market Participant's price offer obligations. The price offer obligations relate to the construction of an Economic Price Offer which requires the Market Participant to form a reasonable Expectation of the sum of all its efficient variable costs that it expects to incur at the time the offer is made. This chapter expands on how a reasonable expectation may be formed, and what constitutes efficient variable costs (section 3.1 in the previous draft). Chapter 2 includes commentary on treatment of uncertainty in the formation of reasonable expectation (section 4.1 in the previous draft).
  - Chapter 3 provides guidance for constructing offers. The content of this chapter remains largely unchanged from the previous draft apart from section 3.1 which has been moved to Chapter 2.
  - Section 4.2 of the previous draft ("Below Cost Offers") of the OCG has been deleted.
  - Remaining chapters are unchanged though some of the chapter titles were updated to better reflect their content.
- Fixing typographical errors identified during the consultation process.

Appendix 4 summaries stakeholder feedback and the ERA's responses.

3.1.2 FCESS runway costs

The ERA received multiple submissions raising concerns with the ERA's proposal to disallow FCESS runway costs as a component of efficient variable cost. These submissions noted that the proposal would have substantial impact on market participants' profitability for uncertain efficiency gains, and that the ERA did not provide stakeholders with enough time to consider such a complex matter.

The ERA agrees that this matter deserves a more comprehensive assessment, including a longer consultation period. Therefore, the ERA has restored FCESS runway costs as a valid component of efficient variable cost in the OCG and will consider the matter at a later time.

3.1.3 Changes retained

The ERA retained the following changes set out in the first draft report:

- Deleting references to WEM Rule 2.16A.1 and WEM Rule 2.16A.2, as these are proposed to be removed. Where relevant, these references will be replaced with references to WEM Rule 2.16C.6A (or Economic Price Offers) or WEM Rule 2.16C.5.
- Removing references to the ERA's obligation to determine that the market participant had market power at the time of offering the relevant prices in the STEM submission or Real-time market submission.
- Deleting reference to the to-be-removed WEM Rule 2.16C.11 that is based on WEM rule 2.16A.1.
- Removing section 3 which explains how the ERA tests for the presence of market power.
- Noting record keeping obligations for material and/or material constrained portfolios.
- Introducing a new example based on the ERA's observations in monitoring the market since 1 October 2023. Example 20A explains the costs which can be claimed in the FCESS market for a Contingency Reserve Raise if market participant's maximum capacity is higher than its enablement maximum for Contingency Reserve Raise.
- Updating figures (where relevant) to the more current numbers (such as the Australian Energy Market Operator's market fees).

4. Trading Conduct Guideline

The TCG aims to provide clarity and guidance regarding the prohibited conduct described in WEM Rule 2.16A.3:[34]

> A Market Participant must not engage in conduct in the STEM or Real-Time Market that:
>
> (a) is false, misleading or deceptive, or likely to mislead or deceive;
>
> (b) is fraudulent, dishonest or in bad faith; or
>
> (c) has the purpose, or has or is likely to have the effect, of distorting or manipulating prices in the Wholesale Electricity Market.

4.1 Proposed changes

4.1.1 Changes from first draft

Following the first draft report, some stakeholders requested further examples be added to the TCG. The ERA proposes to introduce two new examples:

- Example 8, which illustrates when withholding capacity will not be in breach of WEM Rule 2.16A.3(c)
- Example 11, which looks at predatory pricing in the real-time market which aims to discourage investment and would likely breach WEM Rule 2.16A.3.

Section 1.1 explains how to interpret terms, references, and definitions used in the TCG. It will assist market participants in interpreting the TCG.

The ERA's responses to stakeholder feedback are provided in Appendix 4.

4.1.2 Changes retained

The ERA retained the changes to the TCG set out in the first draft report:

- Change due to amendments to the test name in WEM Rule 2.16C from "Market Power Test" to "Materiality Test".
- Adding a note explaining when it is no longer mandatory for a facility to accredit for FCESS.
- Changing references from WEM Rule 2.16A.1 to WEM Rules 2.16C.4, 2.16C.5, or 2.16C.6.
- Minor changes in Examples 4 and 5 to better reflect the operation of the new market.
- Adding new examples based on the ERA's observations in monitoring the market since 1 October 2023:
  - Example 9 (previously Example 8) illustrates when withholding capacity has effect of distorting energy prices and may be in breach of WEM Rule 2.16A.3.
  - Example 10 (previously Example 9) explains when application of avoidable fixed costs may result in breach of WEM Rule 2.16A.3.
- Minor grammatical changes.

[34] Wholesale Electricity Market Rules (WA), 30 October 2024, rule 2.16D.1(b) (online).

- Improving readability.

Appendix 1 Offer Construction Guideline (amended)

The Offer Construction Guideline containing the ERA's proposed changes is available on the ERA's website (online).

Appendix 2 Trading Conduct Guideline (amended)

The Trading Conduct Guideline containing the ERA's proposed changes is available on the ERA's website (online).

Appendix 3 Stakeholder Submissions

Stakeholder submissions can be found on the ERA's website (online).

Appendix 4 Summary of Stakeholder Feedback

Topic	Summary of Feedback	Submitter	Response
Consultation Period			
Consultation period	Concerned with the ERA's choice to propose change to WEM Procedures and Guidelines based on an Exposure Draft of WEM Amending Rules rather than a final version of the Amending Rules. Given the significance of these Rule changes and the submissions EPWA has received as part of the Rule Change Process. Expects that the final Amending Rules will differ from the Exposure Draft, necessitating redrafting of the Procedures and Guidelines and a new, or at least an extended consultation period by the ERA	Confidential submission	The ERA is undertaking second round of consultation with market participants on the changes proposed to the OCG and TCG.
	Shell considers that insufficient time and information has been provided to market participants to understand and apply the changes in the updates Guidelines given that this is critical to market participants compliance with the WEM Rules. Shell Energy representatives attended a stakeholder workshop held by the ERA on 19 September 2024 where it was outlined that the ERA intends to have updated version of the Guideline and Trading Conduct Guideline completed by 20 November 2024. Shell appreciates that the timeline for the Guideline changes alights with EPWA's proposed WEM Rule changes coming into effect. However, multiple concerns were raised by stakeholders around the timeline in the workshop held by the ERA on 19 September 2024. Furthermore, the release of new information relating to positions taken by the ERA in the Guidelines was only released to the market on 19th September 2024, halfway through the consultation period. Ideally, this new information would have formed part of the initial information set available to market participants to assess the Guidelines	Shell Energy	
Offer Construction Guideline			
General comments on OCG	Shell is concerned that the Guidelines do not enable market participants to recover reasonable costs from the energy market in the WEM. The proposed changes currently under consultation have not alleviated this concern.	Shell Energy	The OCG enables recovery of a market participant's reasonable expectation of efficient variable costs.

Topic	Summary of Feedback	Submitter	Response
	The offer construction obligations imposed on market participants do not recognise the high levels of uncertainty in constructing price bids for the real time market and associated increased cost of the "Regulatory Burden" for Market Participants. Demand forecasts are subject to error, and factors including intermittent generation, large scale storage and unexpected outcomes from the dispatch engine is increasing uncertainty	Alinta Energy	Chapter 2 details how a market participant might form their reasonable expectation of their efficient variable cost. However, the ERA notes that there are many different situations faced by market participants, but the OCG can only provide general guidance. No example has been provided to support the existence of asymmetric risks faced by market participants.
	Synergy seeks guidance on the allowable process by which Market Participants can account for forecasting errors in their market offers noting that the actual market outcomes (including dispatch volumes, run time and Market Clearing Prices) cannot be accurately predicted at the time of making market offers, particularly for offers in the Short-Term Energy Market (**STEM**). Synergy also notes that, many of the risks faced by Market Participants are asymmetrical. Where such asymmetrical risks exist, Synergy considers a Market Participant may not be able, on average, to recover its EVC. Therefore, it appears the ERA's prohibition against including risks margins is inconsistent with the requirement in clause 2.16D.1(a)(iii) of the WEM Rules.	Synergy	
Exclusion of Runway costs of CRR from energy offers	Do not support the exclusion of runway costs of CRR from price offers on the basis that CRR costs are an unavoidable cost incurred by electricity producers that varies with energy production. It meets the ERA's criteria of efficient variable cost as outlined in section 3.1 of the OCG and therefore should be allowed for inclusion in energy offers. Based on the ERA's draft report dated 5 September 2024 and the information presented at the public workshop on 19 September 2023, the ERA have inadequately justified the reason for or need to exclude CRR costs in energy offers. It is unclear how market efficiency will be improved if, by ERA's own words "ERA's proposal may prevent some generators from recovering their runway FCESS costs". Creating a market where participants cannot recover their costs not only threatens the commercial viability of existing energy assets in the WEM but also discourages future investment. Furthermore, this proposal does set a conceptual precedent that has to be followed when the runway cost allocation of Contingency Reserve Lower is eventually implemented (as an outcome of EPWA's cost allocation review), and doing so will negatively impact commercial viability of potential and	Confidential submission	Issues raised by stakeholders identified a lot of complexities. The ERA will examine these issues and the potential of inefficient market outcomes resulting from the inclusion of CRR costs in energy offers in the future.

Topic	Summary of Feedback	Submitter	Response
	existing Electric Storage Resource project. If the ERA still considers that exclusion of CRR costs from energy offers improves market efficiency, these changes should be at least postponed so that further analysis can be conducted and additional industry input can be sought.		
	Perth Energy notes that these costs are an integral part of operating a power station and cannot simply be carried by the Market Participant. They vary with power station output so, in our opinion, fall into the category of other variable costs. At the briefing on Thursday, September 19, the argument was put forward that not paying these costs will encourage investment in smaller facilities which would keep total costs down. This is wrong. Larger machines will generally have lower per unit capital costs than multiple smaller units and network connections will be simpler thereby further reducing capital costs. Maintenance costs are also expected to be lower for a single large machine rather than several smaller units. The size of a new generation plant needs to be optimised by considering both capital and operating costs and is likely to be larger as system demand, and hence installed capacity, increases. We can see this historically as machine sizes have risen from 200 MW in the 1980s through 300 MW to the current 340 MW machines. Appropriately recognising contingency reserve raise costs is an integral part of encouraging the right size of new capacity to minimise customer costs.	AGL/Perth Energy	
	Shell considers the detail and quality of the analysis presented at the 19th September 2024 workshop was insufficient for the ERA to justify the case for change relating to Contingency Reserve Raise costs, a decision that impacts settlement channels to the magnitude of approximately $100 million per annum in the WEM. Shell agrees with the ERA's definition of an Economic Price Offer being an offer not greater than the sum of all Efficient variable costs and that a market participant including only EVC will incur no operating losses if its facility is not dispatched when the market clearing price does not reach its offer price. Further, Shell believes that, by extension, a market participant including only EVC would incur no loss, or gain no profit, if its facility is the marginal producer (i.e. the market clearing price matches its offer).	Shell Energy	

Topic	Summary of Feedback	Submitter	Response
	Based on the above, Shell contends that Contingency Reserve Raise costs vary with output and should therefore remain a component of the Economic Price Offer. There is zero Contingency Reserve Raise cost attributed to a generator if it is not producing energy and meets the ERA's definition of an efficient variable cost at a participant level. For a producer to incur no loss from increasing generation it must reflect Contingency Reserve Raise costs in its offer. Shell understands that the proposal is intended to improve market efficiency, however, it is challenging to see this benefit. The consultation document observes, "ERA's proposal may prevent some generators from recovery (sic) their runway FCESS costs". Creating a market where participants cannot recover costs not only threatens the commercial viability of existing energy assets in the WEM but could also discourage future investment. Therefore, Shell recommends the ERA retail the Contingency Reserve Raise cost as an allowable component of the Economic Price Offer.		
	Alinta proposes for the current wording of 3.5.2 remain unchanged. CRR costs are clearly within the definition of an efficient variable cost. Per the definition on page 9 of the Offer Construction Guideline, CRR costs 'vary' (increase) with the production of energy and are only incurred by a Market Participant when producing electricity. Additionally, the table listing EVCs on page 11 includes, "Other costs as appropriate (for example, other ESS charges allocated to Facilities that vary with the production of energy)." The proposal is contrary to WEM Rule clause 2.16D.1(a)(iii) which requires the Offer Construction Guideline to "permit the recovery of all efficient variable costs of producing the relevant electricity" (emphasis added). Besides RTM offers, there is no other market mechanism for Market Participants to recover their CRR costs. Not including CRR costs is inefficient because it prevents Facilities from reflecting costs that would reduce their production, making the CRR requirement (and associated costs) higher than they need to be. Issues associated with dispatch efficiency should be addressed at the root cause, and amendments to the dispatch engine – and not via intervention in Market Participants' offers to prevent unintended and adverse market	Alinta Energy	

Topic	Summary of Feedback	Submitter	Response
	outcomes. The rationale in ERA's draft report is extremely vague, noting only that removing CRR costs from the list of EVCs would 'improve efficiency' and does not explain how these costs are recovered elsewhere. This proposal would expose Market Participants to very significant unrecoverable costs and this could force early exits and dissuade future investments, especially if problems with the dispatch engine and tiebreak method persist, inflating FCESS Uplift Payments. Market Participants would have no ability to avoid these costs		
	Strongly oppose the proposed change to remove generators' ability to recover Contingency Reserve Raise (CRR) costs. Submitters consider that the cost of CRR is directly related with the generation of electricity. The cost contingency is inherently linked to the generation of electricity since the CRR cost goes up or down relative to production. Therefore, the cost of providing this service is a variable cost and it must continue to be considered an efficient variable cost The first draft Offer Construction Guideline published in 2022 did not include the ability to recover CRR costs via Short Run Marginal Cost (SRMC) pricing. During the public consultation period, Synergy corrected the oversight suggesting that ESS costs that are incurred due to facility operation should be allowed to be included in the construction of offers. The ERA agreed with Synergy and in response commented "Runway Cost of Contingency Reserve Raise (CRR) is included in Market Participant costs in Table 1 as generators pay for the cost of procuring CRR in proportion to their energy output." The ERA updated the Offer Construction Guideline accordingly. CRR costs continue to be attributed in proportion of the energy output of a facility, relative to other facilities, and in the submitters' view there is no basis, stemming from economic principles, provided evidence or otherwise, for the ERA's reversal of its earlier position on this matter. Unverified WEMDE pricing outcome: The ERA claimed that if market participants were to include CRR costs in their bids, it would result in CRR costs being double counted and thus, market participants being overpaid. The submitters disagree with the ERA's understanding of how WEMDE is calculating prices. The submitters have not seen any evidence from market outcomes that would support ERA's claims. The trading team closely monitors	Bluewaters & Summit Southern Cross Power	

Topic	Summary of Feedback	Submitter	Response
	pricing outcomes daily, and have not encountered the situation that ERA has presented as the basis for this change to the Offer Construction Guideline. Additionally, the ERA has not presented any evidentiary examples of WEMDE working in the manner as described. This is an unusual action of the regulator who to date has heavily relived on evidence backed decisions. Considering there are opposing views within the market on how fundamentally WEMDE is determining pricing outcomes suggests there is an opportunity for the ERA to review WEMDE. Given the complexities of pricing calculations and the high ESS costs in the new market; the possibility of some underlying inefficiencies being discovered seems unlikely. Efficient cost recovery and inefficient pricing outcome: While the submitters disagree with ERA's basis for the change to CRR cost recovery, even if the ERA understanding of WEMDE were to be correct, the submitters consider the blanket elimination of cost recovery as a problematic approach. Price determination and cost recovery are entirely separate concepts. There is a natural link between the two given that one may feed into the other. But it's possible to have an inefficient pricing outcome and an efficient cost recovery. Just as it's possible to have efficient pricing outcomes and inefficient cost recovery. The ERA is seeking to correct an inefficient pricing outcome by eliminating the ability of market participants to efficiently recover costs. The proposed solution by the ERA does not tackle the underlying problem, and more concerning, given its uneconomic principle, is likely to have the effect of causing significant and irreversible financial damage to some generators Inability to recover variable costs: If ESS costs are not included in the SRMC, market participants would not be able to recover costs. There is a substantial difference in the SRMC prices with or without the inclusion of ESS costs due to the high cost of procuring ESS in the WEM since 1 October 2023. RTM prices would be artificially low and even non-marginal generator would be uneconomic in most intervals. This could encourage generators to minimise exposure to ESS costs either through limiting merchant supply (to avoid unrecoverable cost), increasing contracting volumes or, over the longer term, seeking behind the meter supply solutions. Enshrining uneconomic price construction and an inability to recover variable cost into the rules is not a trivial change. The ERA should give careful regard		

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<tr><th>Topic</th><th>Summary of Feedback</th><th>Submitter</th><th>Response</th></tr>
<tr><td></td><td>to the broader impacts that such a proposed change might have to future generation investment decisions. As dispatchable supply becomes increasing scarce, disincentivising further dispatchable supply is counterintuitive.</td><td></td><td></td></tr>
<tr><td></td><td>Synergy neither supports nor understands the proposed amendment to the OCG removing the ability for market participants to include costs of Contingency Reserve Raise (CRR Costs) in the construction of market offers. In particular, Synergy makes the following points:
CRR Costs are incurred with the provision of energy and market services. They are unavoidable when a Facility provides energy and vary with a Facility’s production level. These costs are variable and should form part of a facility’s Efficient Variable Costs (EVC).
The ERA provided some reasoning for the proposed change at the “Wholesale Electricity Market (WEM) Procedures and Guidelines – Online Workshop” held on 19 September 2024, halfway into the consultation period on the draft amendments to the OCG, TCG and Monitoring Protocol. However, the ERA’s reasoning is incomplete. Synergy requests that the ERA provide a more fulsome explanation for the proposed change.
WEM Rule 2.16D.1(a)(iii) requires the ERA to develop and maintain the OCG so that the OCG permits the recovery of all EVC of producing the relevant electricity. Synergy therefore considers that the ERA must either: 1. explain why the ERA considers CRR Costs are not ‘efficient’ costs (noting the costs are clearly ‘variable’ costs because they change with a Facility’s output, and are only incurred when the Facility is operating); or 2. amend the draft OCG to reinsert the CRR Costs as valid components of EVC.

Given the above, Synergy further suggests that the proposed amendments to exclude CRR Costs from the list of EVC components should be removed from the current consultation, and instead be undertaken at a later point in time to allow for further clarification of the ERA’s rationale for this proposal and analysis of the CRR Costs outcomes and any cost impacts on the Energy Market Clearing Price.

In its Annexure, Synergy adds:</td><td>Synergy</td><td></td></tr>
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Topic	Summary of Feedback	Submitter	Response
	• it does not understand how a market participant gains surety that any potential producer surplus obtained through the WEMDE Market Clearing Price will be sufficient to cover the CRR costs incurred by a facility. • it seeks to understand how trade-offs between mutually exclusive in-service quantities for Energy and Contingency Reserve Raise are relevant when a Facility is operating below its costs (i.e., it is out of merit for Energy but constrained on by WEMDE for the provision of FCESS). • Synergy seeks clarity whether the ERA has undertaken any Facility revenue adequacy analysis relative to the CRR Costs allocated to Facilities. Synergy seeks additional analysis to be provided by the ERA to support its position. • when a Facility's costs are inefficient (including the share of CRR Costs attributed to the Facility) it will be penalised in the short-term due to reduced dispatch in the Real-Time Market, which impacts the profitability and ability to recover fixed costs for that Facility. In the long-term, Market Participants are likely to be forced to retire these Facilities early due to the likelihood of losses being incurred. • Investors should be considering the full costs of investment, and not solely focused on the CRR Costs. • Synergy requests the ERA provide its views on how its decision to implement this policy objective is consistent with its obligation in clause 2.16D.1(a)(iii) of the WEM Rules.		
Requiring an independent expert to verify the allocation of start-up costs	A new addition in section 3.1 of the OCG requires that "independent expert advice must support the distribution of costs across run time, output and number of starts". While the principles of this requirement may be applied to any type of facility, it is most relevant to peaking assets that operate irregularly and are most likely to distribute incurred costs across runtime, output and starts. It is not appropriate to require Independent expert advice to support distribution of their costs across run time, output and number of starts as such experts are unlikely to have sufficient knowledge and appreciation of individual characteristics of each facility, the pace at which their operational profiles have/may have to change in response to an evolving WEM landscape, nor the	Confidential submission	The ERA acknowledges that the intent was not accurately reflected in the proposed amendment. The principle to be applied is that the allocation of start-up costs across runtime, output and starts should be able to be independently verified in accordance with good electricity industry practice.

Topic	Summary of Feedback	Submitter	Response
	wider commercial or regulatory considerations that a facility owner may have to account for when constructing energy offers. If the intent of this requirement is to ensure Market Participants make Economic Price Offers, then it is unnecessary as there is appropriate guidance in the OCG with sufficient penalties imposed under the rules to influence how offers are constructed.		A Market Participant may choose to use their internal experts and methods to determine this cost allocation. However, if the Market Participant’s method was called into question, an independent expert acting reasonably should be able to arrive at a similar determination. The ERA has amended the relevant clause of the OCG .
	AGL/Perth Energy does not support the requirement for an independent expert advice for assignment of start-up costs. Start-up costs can form a substantial proportion of an offer for a generator that runs only for a relatively short time such as a firming gas turbine. Such a machine may well have market power at this time so we can understand the desire to authenticate bids by the use of an independent expert. Perth Energy contends, however, that securing sufficient advice to cover the wide range of operating situations that may arise is impractical. It could, as an extreme, prevent a facility from bidding because the precise set of circumstances being faced has not been explicitly considered. Perth Energy suggests that compliance is better approached by requiring market participants to document the general methodology through which these costs are to be estimated. In the event of a potential dispute, the ERA can review the methodology and also assess whether this had been followed in any given situation. Perth Energy sees this approach as having the flexibility to accommodate a range of operating scenarios while assuring the ERA that offers are efficient.	AGL/Perth Energy	
	Shell does not support the proposal to require market participants to acquire independent expert advice on the allocation of startup costs across runtime, number of starts, and production. This requirement is not contained in the WEM Rules and Shell sees little value being added by an independent expert with less detailed understanding of each generator than is possessed by the operator of the plant. Market participants have significant obligations under the WEM Rules regarding assumption detailing, as well as calculation and record keeping obligations. The addition of a requirement for expert advice provides no additional governance certainty or transparency. Instead, the requirement adds costs to market participants and is an onerous additional administrative burden. It is also likely	Shell Energy	

Topic	Summary of Feedback	Submitter	Response
	to be unworkable in practice due to the evolving calculation of EVC. Shell recommends removing the requirement from the draft guidelines.		
	We oppose the proposed requirement that "independent expert advice must support the distribution of costs across run time, output and number of starts" and recommend the removal of this requirement considering that: This is outside the scope of the Offer Construction Guideline as set out in the WEM Rules clause 2.16D.1(a). This appears to require an independent expert to approve all aspects of a Market Participant's offer construction, noting that all costs are distributed across 'run time, output and number of starts'. Independent experts are unlikely to be better placed to review offer construction compared to experts within a Market Participant's organisation. This would impose unnecessary costs and may delay efficient changes to offers, undermining market efficiency. It appears Market Participants would not gain any benefit from engaging the independent expert – there is no 'safe harbour' provision in return. Market Participants, and particularly those with Material Portfolios already have strict obligations under the Market Power Mitigation Rules and should be free to decide for themselves whether engaging independent advice serves them in supporting their compliance with these obligations. We suggest that any engagement of an independent expert by a Market Participant to review aspects of their offer construction should be at the participant's discretion and provide them with a level of 'safe harbour'. This would be consistent with the Market Power Mitigation mechanism by providing ex-ante regulatory certainty while reducing the need for ex-post investigation and litigation processes and support regulatory effort being more proportionate to the cost and the risk being managed	Alinta Energy	
	Synergy also seeks clarity as to what is the intended legal effect of the obligation that the distribution of costs "must" be supported by the "Independent expert advice"? Is this intended to state that the approach used by a Market Participant for cost determination is appropriate? For example, does it mean: • if a Market Participant does not obtain independent expert advice the Market Participant will be in breach of a WEM Rule and, if so, which WEM Rule; or	Synergy	

Topic	Summary of Feedback	Submitter	Response
	• if a Market Participant does obtain independent expert advice, and allocates start-up costs consistently with that advice, the Market Participant will effectively be deemed to have included start-up costs in a manner consistent with the OCG. Synergy also would like to understand how the requirement to obtain independent expert advice, as implied via the phrase "independent expert advice must support", is considered under the ERA's Monitoring Protocol. Further, this requirement appears to be beyond the requirements of the WEM Rules, and the costs incurred for an independent expert do not appear to be recoverable in the WEM under the OCG or considered within the determination of the Benchmark Reserve Capacity Price		
Requirement to allocate costs across time and production in a uniform manner	Opposes the proposed requirement to allocate costs "across time and production in a uniform manner" and recommend that it be removed. This language is vague and it is unclear what is meant by "uniform". For example, it could be interpreted as requiring Market Participants to offer the same input costs for every expected run or prohibiting Market Participants for offering below cost for a period (or a certain quantity) to avoid shutting down. This could result in unnecessary shutdowns, increasing a Facility's operating costs and potentially preventing it from maximising its availability during high demand periods.	Alinta Energy	The ERA acknowledges that the intent was not accurately reflected in the proposed amendment. The intent is that the distribution of costs uses a methodology that reflects a reasonable relationship between those costs and variables such as number of starts and output. The ERA revised the wording in the OCG.
	Is "in a uniform manner" intended to mean utilising a consistent methodology to determine how costs are allocated (i.e., always via the number of starts)? Or does "in a uniform manner" imply that the cost allocation per interval should be a consistent $/MWh value for each dispatch run? Synergy considers that within a Facility's dispatch run, there could be a selection of intervals where the Market Participant may offer below costs (where appropriate to do so, and such that it is intended to minimise total costs overall – i.e. by avoiding a shutdown and restart etc.) to keep the Facility online. In such circumstances, Synergy considers that it should be allowable for the Market Participant to "shape" the allocation of start-up costs so that these costs are recovered in the intervals where the Facility is able to be offered at its full EVC and remain online. For example, assume the Facility is expected to be "out of merit" for one Trading Interval in a dispatch run of ten Trading Intervals. In such circumstances can the start-up cost be allocated across the nine Trading Intervals, rather than ten,	Synergy	

Topic	Summary of Feedback	Submitter	Response
	noting that the Market Participant is not expected to be recovering its start-up cost (due to offer at lower price as out of merit) in one Trading Interval?		
Defining an Inefficient Market Outcome	Further information and guidance is required as to what constitutes an Inefficient Market Outcome in the context of WEM Rule clause 2.16C.5 and how the ERA will assess against those outcomes to determine that a market participant has caused an inefficiency as a direct result of an Irregular Price Offer. Such guidance should answer the following questions: • What framework will be used? • What factors will be considered? • What economic principles will be relied upon? The assessment process should draw on a broad range of measures across structure, conduct, and performance as it is not contrary to the WEM Rule Objectives or the WEM Rules themselves for a market participant to influence prices. Prices should not be considered to bring about Inefficient Market Outcomes merely because prices are changed as a result of a market participant's pricing/bidding behaviour. It should not be the intention to interfere with behaviour which is genuine commercial behaviour as intended by the design of the market, including strategies undertaken by market participants to optimise their operation and the economic rationing of capacity. Courts apply tests of whether the person had knowledge, belief or intent consideration should be given to how such tests will be applied. Further examples that illustrate real life scenarios of offer construction that are considered to create inefficient market outcomes should be provided. Consideration should be given to alignment with the ACCC guidelines on Part XICA – Prohibited conduct in energy market (CCA Guidelines), as appropriate to the circumstances	Alinta Energy	The ERA draws upon a broad range of factors to determine whether inefficient market outcomes occurred. It is not useful to articulate in the OCG, the various factors that the ERA could/would consider because it may be taken to represent an exhaustive list and that would be detrimental to the exploratory nature of this analysis. There is no intention to interfere with offer behaviour that is genuine commercial behaviour without an intent to influence market prices.
	Synergy notes that the ERA has removed examples of what behaviour it considers meets the definition of 'inefficient market outcomes'. Synergy requests the ERA advise whether it has removed these examples because the ERA: 1. considers it is not required by the WEM Rules to include guidance on what circumstances constitute 'inefficient market outcomes'; or 2. has changed its interpretation of what circumstances constitute 'inefficient market outcomes'.	Synergy	The ERA notes that though it has refined some examples, none of the examples have been removed from the OCG. The ERA considers that Example 25 provides sufficient

Topic	Summary of Feedback	Submitter	Response
			guidance on what constitutes 'inefficient market outcomes'. All Market Participants should take guidance from the amended rules and the OCG on how to construct offers such that inefficient market outcome do not occur.
Treatment of LTTOP contracts	Synergy submits that there is lack of clarity on the following issues: 1. How a market participant can compliantly form fuel input prices when its long-term take-or-pay fuel contract(s) do not supply sufficient gas for the relevant Facilities for the relevant period for the price offers. Synergy has separately raised with the ERA Synergy's concerns that the OCG is insufficiently clear in providing guidance on how a Market Participant with multiple gas contracts can make compliant offers based on those gas contracts (similarly for multiple fuel contracts). 2. how to determine a 'market price' of gas (similarly for any fuel type), particularly for a generator or portfolio of generators that has gas demands that are too large to consistently purchase all of that gas demands from the spot markets alone. The OCG does not provide sufficient guidance on how to determine a market price of each fuel type. 3. how a Market Participant would practically be able to identify such 'least impact' Dispatch Intervals for each of these six markets, energy and the five FCESS markets, for each and every 5-minute period across each day. A requirement for Market Participants to identify the Dispatch Intervals where using its LTTOP fuel contract prices would have the least impact on market prices is a complex and uncertain task. Synergy is also concerned that pricing in a manner with the intention to have a certain impact on market prices appears inconsistent with the prohibition against market submissions having the purpose or effect of manipulating market prices (clause 2.16A.3 of		The OCG expressly addresses this question. The ERA notes that the OCG can only provide general guidance.

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<tr><th>Topic</th><th>Summary of Feedback</th><th>Submitter</th><th>Response</th></tr>
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Synergy considers issues 1 and 2 now urgently require clarification following the removal of clause 2.16A.1 in the FCESS Rules, the effect of which is to remove the comfort that offer prices were compliant if they were consistent with the offer prices that would be made by a Market Participant without market power.
WEM Rule 2.16D.1(a) requires the ERA to provide guidance in relation to the application of the new pricing rules (as amended in the FCESS Rules) and details of how the ERA will assess offer prices. In Synergy's view, the OCG is currently inconsistent with these WEM Rule obligations because it does not provide sufficient guidance or detail in light of the amendments in the FCESS Rules. Synergy recommends that further amendments to the OCG are required to address these issues.
Synergy provides two alternate options for the ERA's consideration which permit recovery of all LTTOP fuel contract costs and do not have the purpose or effect of manipulating market prices.
1. A Market Participant determines its offer prices based on its LTTOP fuel prices for sequential Dispatch Intervals until the Dispatch Interval that the Market Participant expects to have consumed all of the minimum requirements from its LTTOP fuel contract; or
2. A Market Participant determines its offer prices based on its forecasted weighted average cost of fuel that it expects to purchase for the relevant Trading Day (Synergy expects that this approach is likely to result in lower average offer prices for a Trading Day).
Synergy considers that option two is preferable.</td><td></td><td></td></tr>
<tr><td>Minor typographical errors</td><td>Example 12, page 32 and example 14, page 33, appear to have typographical errors – the amendments state these offers are "Irregular Price Offers" whereas they were previously noted as compliant examples</td><td>Alinta Energy</td><td>Noted and amended</td></tr>
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Topic	Summary of Feedback	Submitter	Response
	Synergy considers that the proposed edits to Example 11 (swapping the order of $24 and $48 in the calculation) is in error and the edits should be reverted back as per the current OCG. The drafting in the Examples 10, 12, and 14 is also in error. Synergy considers the final sentence in Example 10 should instead state: *"….not compliant with WEM Rule 2.16C.6A and* ***would not be*** *an Economic Price Offer and would result in an Irregular Price Offer under WEM Rules 2.16C.6(c) and, (d)."* The final sentence for Examples 12 and 14 should instead state: *"…. are consistent with WEM Rule 2.16C.6A and* ***would ~~not~~ be*** *an Economic Price Offer and* ***would not*** *result in an Irregular Price Offer under WEM Rules 2.16C.6(c) and, (d)."*	Synergy -	Noted and amended
Offers at or below EVC	Synergy requests confirmation that offers at or below EVC are now only relevant to conduct that is described in the TCG and not in the OCG.	Synergy	Correct
Ex-ante vs Ex-post pricing	Synergy agrees with the ERA's interpretation of the new 'Economic Price Offer' pricing rules. The ERA's interpretation includes a requirement for offer prices to reflect a market participant's "reasonable expectation" of EVC.	Synergy	Noted
Transition period	The proposed amendments to the TCG and OCG, coupled with the proposed FCESS Rule amendments, deliver fundamental change to trading obligations within the WEM. Synergy requests that a three-months amnesty period for compliance is applied to allow enough time for market participants to implement the changes.	Synergy	The ERA cannot comment on a policy matter.

Topic	Summary of Feedback	Submitter	Response
FCESS pricing and WEMDE	Synergy considers that there is an issue with the current design of AEMO's WEM Dispatch Engine (WEMDE) in that its optimisation function does not consider FCESS uplift payments which is one of the greatest costs to provide FCESS. That is because total FCESS costs in the WEM are predominantly based on FCESS uplift payments and there are little to no additional marginal variable costs that are incurred in providing FCESS meaning market participants are likely to offer FCESS services at or near $0. Market participants are currently unable to understand how the market dispatch outcomes will be impacted by the amendments to the tiebreaking constraints as proposed in the FCESS Rules. Synergy is concerned about impacts of the proposed rule changes, combined with the above facts and WEMDE optimisation issues, on the number of commitment and decommitments for gas turbines providing FCESS services. Synergy requested EPWA for a two-week market trial period for market participants to better understand likely dispatch outcomes.	Synergy	
Long Term Service Agreements	Synergy re-raises its comments from its prior submission on the OCG provided in July 2023, in regard to the OCG not providing sufficient clarity on Long Term Service Agreements. Synergy still considers that the OCG should provide further clarity on the definitions of the annual operating expenses and the annual maintenance expenses and what costs are included in each of these components. Synergy suggests that the OCG should provide more clarity in terms of the definitions and allowable costs for each of the offer construction components.	Synergy	Chapter 3 details how a market participant might allocate maintenance costs to dollars per MW basis. However, the ERA notes that there are many different situations faced by market participants, but the costs should be allocated based on industry standard and independently verifiable if necessary.
Trading Conduct Guideline			
Change to 'In-Service' Capacity flag	Example 8 implies that Market Participants should change their capacity type flag to 'In-Service' where the Pre-Dispatch Schedule indicates that they will be dispatched. The Pre-Dispatch Schedule is often inaccurate and volatile (especially considering it is produced 48 hours out from each Dispatch Interval),	Alinta	The ERA notes that EPWA's further amendments to clause 7.4.2C require Market Participants to monitor Pre-

Topic	Summary of Feedback	Submitter	Response
	and there are many reasonable grounds for a Market Participant to not expect that they will be dispatched, despite the Pre-Dispatch Schedule indicating otherwise. For example, where the schedule is changing constantly, showing outcomes that conflict with experience, where it schedules Facilities for RoCoF Control Service only, or where it is simply reflecting the Facility being trapped within its FCESS trapezium. We recommend that example 8 is amended to reflect that Market Participants may not change their capacity type to In-Service, despite the Pre-Dispatch Schedule, where they have reasonable grounds to not do so.		Dispatch Shortfalls and convert Available Capacity into In-Service Capacity if its would alleviate a shortfall in energy, CRR or Regulation Raise. The effect of this clause is that Market Participants failing to act as outlined in the clause could constitute a violation of good trading conduct. Example 8 is attempting to demonstrate this.
Examples needed	We request that the Trading Conduct Guideline provide examples outlining situations where a Market Participant is permitted to amend their offers to avoid being trapped within their FCESS trapezium. If Market Participants are not permitted to do so, they would be forced to incur losses. The current design of the dispatch engine traps on Facilities. As outlined in the WEM Design Summary, E[S]-E[T] of the WEM Procedure: Dispatch Algorithm Formulation, and 7.5.8 of the WEM Rules, where a Facility offers to provide FCESS, and it is currently producing energy at a point between the Minimum and Maximum Enablement Limits for the relevant FCESS, its energy dispatch will be restricted to being between those limits, regardless of whether it is dispatched for that FCESS. If the Facility is not dispatched for this FCESS at all and is dispatched for energy at one of the Enablement Limits, it is said to be ‘trapped’ inside the FCESS trapezium (See the WEM Design Summary p.88). This design attribute, in combination with the current tie-break method and that the dispatch engine dispatches all RoCoF priced at zero, has been a driver of high FCESS Uplift Payments. Market Participants that are trapped on can incur a loss where they are not dispatched for FCESS and are out of merit for energy. Following planned reforms to FCESS uplift payments, they will also incur a loss where they are out of merit for energy and dispatched for RoCoF Control Service only. Market Participants should not be penalised where they appropriately amend their offers to avoid these losses, even where there is a market impact.	Alinta Energy	The ERA updated the TCG to include a new example (Example 8) which addresses this issue.
Policy concerns	It is concerning that:	Alinta	The ERA considers the

Topic	Summary of Feedback	Submitter	Response
	• a Market Participant does not need to intend to cause harm or to obtain a benefit to be found as having distorted prices, or engaged in false, misleading or deceptive conduct and being in breach WEM Rule 2.16A.3. • the ERA does not need to determine that a Market Participant intended to mislead or deceive and that there only needs to be a real chance of misleading or deceiving for a Market Participant to found to in breach. This seems excessively punitive as it: • appears to expose Market Participants to the risk that they are found in breach of 2.16A.3 where they appropriately amend offers to remove their FCESS capacity from service to avoid losses, as described above, noting that they may be perceived as being deceptive about their FCESS availability, or distorted prices. • contrasts with part XICA of the Competition and Consumer Act, where corporations must be found to be acting fraudulently, dishonestly and in bad faith, or for the purpose of manipulating or distorting prices to be found in breach. To avoid prohibiting profit maximising behaviour, on which efficient markets rely, we recommend that the Trading Conduct is amended to better align with part XICA of the Competition and Consumer Act.		Trading Conduct Guideline adequately meets the requirement of the corresponding clauses in the WEM rules. EPWA's market power mitigation consultation paper outlined the principles and intent behind the new market power mitigation framework, including that the ERA does not need to determine intent for the purposes of deeming trading conduct misleading or deceptive.
Offers below EVC	Requests confirmation that the only instance where offers below Efficient Variable Cost (EVC) are a compliance issue is where such pricing amounts to predatory pricing. If this is not the only circumstances, Synergy asks the ERA to provide examples. Synergy further asks the ERA to provide guidance and clarity on the boundaries of when pricing below (EVC) is compliant and when it is non-compliance with the WEM Rules. The following examples should be included into the TCG relating to offers below EVC: • pricing is compliant with the TCG is when it is required to effect dispatch that reflects physical limitations of the facility, avoid risk of forced outage, and reflects opportunity cost related to production-based subsidy pricing is non-compliant when such pricing amounts to predatory pricing	Synergy	The ERA has included an additional example (Example 11) in the Trading Conduct Guideline to provide guidance on behaviour that may distort market prices.

Topic	Summary of Feedback	Submitter	Response
‘Distortion’ of Market prices	The TCG should provide ‘clarity and guidance’ on what conduct the ERA considers will result in that ‘distorts’ market pricing for the purposes of clause 2.16A.3 of the WEM Rules. Under the current WEM Rules, the baseline against such distortion is clear. However, under the FCESS Rules, such a baseline will not be clear because a market participant will be entitled to offer at or below EVC.	Synergy	The ERA has included additional example (Example 11) in the Trading Conduct Guideline to provide guidance on behaviour that may distort market prices.
Transition period	The proposed amendments to the TCG and OCG, coupled with the proposed FCESS Rule amendments, deliver fundamental change to trading obligations within the WEM. Synergy requests that a three-months amnesty period for compliance is applied to allow enough time for market participants to implement the changes.	Synergy	The ERA cannot comment on a policy matter.