

28 August 2020

Energy Policy WA
Locked Bag 11
Cloisters Square, Perth, WA 6850

Submitted by graham.pearson@energycouncil.com.au to energytransformation@energy.wa.gov.au

Exposure Draft of the Amending Rules (Tranche 1)

The Australian Energy Council (the “**AEC**”) welcomes the opportunity to make a submission to Energy Policy WA on the draft Amending Rules (Tranche 1) (the “**Rules**”).

The AEC is the industry body representing 22 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

Consultation process

The AEC acknowledges and appreciates the ongoing work undertaken by Energy Policy WA to design and implement the energy reforms and engage with industry stakeholders. The draft Rules is a substantial body of work with lasting implications for the Wholesale Electricity Market (“**WEM**”) so it’s critical that an appropriate amount of time is taken to ensure the Rules are appropriate, tested, and widely agreed.

The challenge with considering these draft Rules as tranches is that they appear in isolation. Stakeholders are requested to make submissions on the draft Rules without knowing what other changes will be proposed in future tranches. There are two obvious examples of this in the Tranche 1 draft Rules.

Firstly, TDOWG participants were advised that all Generator Performance Standard (“**GPS**”) rules will be released together and form part of the same consultation process. It appears, however, that the draft Rules only contain part of the GPS rules and exclude the baseline rules that apply to existing generators.

Secondly, a number of the proposed rule changes in Tranche 1 relate to market power mitigation but this topic will form part of Tranche 5.¹ This makes it difficult to consider the implications of these Tranche 1 amendments as part of the broader market power mitigation changes. It is also unknown if additional market power mitigation measures will be proposed as part of Tranche 5 and/or unnecessary measures removed.

The amending rules will shape the WEM for years ahead and, rather than being driven by deadlines, the focus should be on ensuring the rules changes are fit for purpose. The AEC encourages Energy Policy WA to allow a final consultation process, after Tranche 5 is released, that gives stakeholders an opportunity to provide comment when all of the proposed rule changes can be considered as a package. This final consultation period will allow stakeholders to consider the changes holistically and make informed comment.

¹ See p4, [Proposed Amending Rules to the Wholesale Electricity Market Rules – Tranche 1](#)

Furthermore, it appears that many of the technical details are being moved to WEM Procedures, which has substantially less oversight than the WEM Rules, and allows AEMO to develop and approve its own changes. While the preference is for these items to be contained in the WEM Rules, the AEC expects that there will be a robust and transparent consultation process for the WEM Procedures.

Supplementary Essential System Service Mechanism

The Rules introduce the concept of a Supplementary Essential System Service Mechanism (“**SESSM**”), which can be triggered by either AEMO or the Economic Regulation Authority. The Economic Regulation Authority’s power in the SESSM process is explained in the Consolidated Draft Amending Rules for WEM Reforms “Tranche 1”:

“The Economic Regulation Authority will have the power to designate facilities to participate in the SESSM, where the Market Participant is expected to have, or be able to exercise, market power in respect to any of its facilities.”²

For the reasons outlined previously, the AEC has a strong view that it is premature to consider the Economic Regulation Authority’s approach to market power. The Economic Regulation Authority’s SESSM trigger should be removed and instead considered as part of the market power mechanism consultation in Tranche 5.

However, in the event that Energy Policy WA does proceed with this trigger, the AEC is concerned that the Economic Regulation Authority has the unilateral power to designate facilities based on an opinion about market power. It seems that this designation is determined by the characteristics of a facility, rather than the behaviour of a facility and whether it has exercised market power. And the impact of being a designated facility will be substantial. For potentially no fault of its own, a market participant could have a designated facility that is not able to earn any profit but will incur additional time and costs to participate in the SESSM. On top of this, the Rules offer no recourse for the market participant to challenge the Economic Regulation Authority’s decision on the designated facilities.

The AEC makes the following recommendations:

1. “Market power” and “inefficient market outcomes” should be clearly defined in the amending rules.
2. The Economic Regulation Authority should only be allowed to designate facilities when market power has been exercised.
3. A mechanism is introduced to give market participants the opportunity to appeal against the Economic Regulation Authority designating their facility.

Short Term Energy Market

The draft Rules make a range of proposed changes to the Short Term Energy Market (“**STEM**”). One of these amendments is the inclusion of a good faith concept:

“6.6.3. A Market Participant must:

(a) make information in a STEM Submission and Standing STEM Submission in good faith;

(b) not act in a manner that:

i. is intended to lead; or

ii. the Market Participant should have reasonably known is likely to lead, to another Rule Participant being misled or deceived as to the existence or non-existence of a material fact relating to the STEM.”³

Items 6.6.3A through 6.6.3CD attempt to explain when a submission is made in good faith or not. The challenge for market participants, however, is forecasting ahead with any degree of accuracy given the large and growing role of behind the meter PV and large-scale intermittent generation. It is unclear how STEM Submissions can be lodged in good faith knowing that it will most likely be inaccurate due to the complexity of forecasting ahead.

² See p60, [Consolidated Draft Amending Rules for WEM Reforms “Tranche 1”](#)

³ See p169-170, [Consolidated Draft Amending Rules for WEM Reforms “Tranche 1”](#)

Forecasting ahead is a difficult task for any market participant and it represents a significant risk. Item 6.6.3E does not allow a risk margin to be included leaving the market participants to carry all of the forecasting and commercial risk. One of the reasons for the reforms is to provide the settings to attract market entrants but this risk level will hinder that objective.

The AEC recommends that the Rules are amended to reflect that market participant actions with minimal material impact on the market, such as forecasting a week or day ahead, should only have reasonable endeavour obligations whereas those actions that can directly impact the market or other market participants, such as real-time bids, should have best endeavour obligations.

Civil penalties

Many of the changes associated with the Rules include civil penalty provisions. Given the multitude of changes and the extremely tight timeframe to consider and adapt to these changes, it may be worth considering introducing the Rules with a moratorium on civil penalties over a transitional period. This period would also allow the implementation of any other urgent rule changes not considered during this process.

Conclusion

The AEC appreciates this opportunity to provide feedback on the draft Rules and encourages Energy Policy WA to consider the issues raised above.

Any questions about our submission should be addressed to Graham Pearson, Western Australia Policy Adviser by email to graham.pearson@energycouncil.com.au or by telephone on 0466 631 776.

Yours sincerely,

Graham Pearson
Policy Advisor, Western Australia
Australian Energy Council