

12 December 2022

Energy Policy WA  
Locked Bag 11  
Cloisters Square WA 6850

Submitted via email by [graham.pearson@energycouncil.com.au](mailto:graham.pearson@energycouncil.com.au) to [energymarkets@dmirs.wa.gov.au](mailto:energymarkets@dmirs.wa.gov.au)

## Market Power Mitigation Strategy

The Australian Energy Council (the “**AEC**”) welcomes the opportunity to make a submission on the Market Power Mitigation Strategy information paper (“**Information Paper**”) <sup>1</sup> and the Market Power Mitigation WEM Amending Rules – Exposure Draft (“**Exposure Draft**”) <sup>2</sup> published by Energy Policy WA (“**EPWA**”).

The AEC is the peak industry body for electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. Our members collectively generate the overwhelming majority of electricity in Australia, sell gas and electricity to millions of homes and businesses, and are major investors in renewable energy generation. The AEC supports reaching net-zero by 2050 as well as a 55 percent emissions reduction target by 2035, and is part of the Australian Climate Roundtable promoting climate ambition.

The AEC makes the following comments in relation to the Information Paper and the Exposure Draft.

### Information Paper

There have been significant changes in the energy market in the period since the Energy Transformation Taskforce released its Improvements to Market Power Mitigation Mechanism information paper<sup>3</sup> in May 2021. In this time, the generation mix has continued to evolve, EPWA launched a limited review of the Reserve Capacity Mechanism (“**RCM**”), Synergy announced plans to close coal-fired power plants by 2030 and build no new natural gas-fired power plants after 2030, the State Government released new policy principles that may introduce penalties for all high carbon emission electricity generation technologies in the Wholesale Electricity Market (“**WEM**”) <sup>4</sup>, and EPWA has proposed significant changes to the civil penalties framework.<sup>5</sup> At the same time, the Economic Regulation Authority (“**ERA**”) released a report on the effectiveness of the WEM and stated that:

*“...Prices in the WEM will not be high enough to support revenue sufficiency for wind, solar and battery storage facilities as more solar, wind and storage facilities enter the WEM, and coal and gas generators exit the market.*”

---

<sup>1</sup> See [Market Power Mitigation Strategy information paper](#)

<sup>2</sup> See [Market Power Mitigation WEM Amending Rules – Exposure Draft](#)

<sup>3</sup> See [Improvements to Market Power Mitigation Mechanism information paper](#)

<sup>4</sup> See [Draft Statement of Policy Principles: Penalties for high emission technologies in the Wholesale Electricity Market](#)

<sup>5</sup> See [Proposed Changes to the WEM, GSI and Pilbara Regulations – Civil Penalties and Reviewable Decisions: Consultation Paper](#)

*The extent of the gap between the revenue received and the revenue required by these renewable energy facilities grows as more of them replace thermal generation. This is because as more solar and wind generators with negligible operational costs enter the market, they set the energy market price at or close to zero more frequently. As a result, all generators in the WEM will face lower and lower prices, which do not allow them to recover their initial investment costs.*

*...Importantly, ESS markets are a significant revenue source for batteries. However as more battery storage capacity enters the market, the revenue greatly diminishes.”<sup>6</sup>*

There is no certainty that the Offer Construction Guideline in the Exposure Draft will enable market participants to recover their reasonable costs from the energy markets and the RCM. This will amplify the lack of revenue adequacy and also have adverse consequences for investment, market operations and consumers.

The AEC has encouraged EPWA to consider the combined consequences of the recommendations that come from the ERA’s review of revenue adequacy, the RCM review, the new policy principles, the proposed changes to the civil penalties framework, and the proposed market power mitigation design. The ERA also noted that “measures must work coherently with the WEM design – including the design of the RCM and market power mitigation measures – to support achieving WEM objectives.”<sup>7</sup>

It is disappointing that EPWA has progressed the Information Paper in isolation, making it difficult for stakeholders to put forward informed comments without understanding the overall impacts. The AEC recommends that EPWA hold further consultation with stakeholders on the market power mitigation design after the RCM review has concluded and the Coordinator of Energy has designed the proposed carbon emission penalties.

### **Clause 2.16C.1**

A stakeholder noted during the TDOWG on 29 November 2022 that the Declared Sent Out Capacity (“**DSOC**”) for a facility may not align with the nameplate capacity. In other words, there could be situations where the DSOC is lower than the nameplate capacity and, equally, there will be circumstances where the DSOC is higher than the nameplate capacity.

The AEC encourages EPWA to identify a method for determining the capacity of a facility that reflects the maximum it could inject into the network. An option could be that the Exposure Draft uses AEMO’s standing data as the maximum sent out generation.

### **Clause 2.16C.3**

Clause 2.16C.3 requires that Market Participants maintain adequate records that are capable of independent verification. This clause creates a broad obligation while not providing guidance on what records are sufficient, leaving an amount of interpretation for the ERA.

The AEC considers that further clarity is required for Clause 2.16C.3. Additionally, the requirement for records should recognise that input costs are not all pre-determined at fixed quantities and instead fluctuate depending on a range of variables, real time decisions and forecasts about uncertain factors. Market Participants cannot be expected to maintain records that can perfectly reverse-engineered and should instead be allowed a margin for uncertainty.

---

<sup>6</sup> See p13 and 18, [Triennial review of the effectiveness of the Wholesale Electricity Market 2022: Discussion paper](#)

<sup>7</sup> See [letter to EPWA on market power mitigation strategy and the triennial wholesale electricity market effectiveness report](#)

## Clause 2.16C.5

The AEC suggests that Clause 2.16C.5 as drafted creates the risk of long and costly investigations for participants for potentially little gain. The requirement to investigate under 2.16C.5 should be subject to an effects test.

## Clause 2.16C.10

It appears that under Clause 2.16C.10 a Market Participant is in breach and guilty if they make an Irregular Price Offer even if it hasn't resulted in an inefficient market outcome. The AEC considers that this clause should incorporate an effects test and reference 2.16C.6 as follows:

*"Where the Economic Regulation Authority has determined under clause ~~2.16C.5~~ 2.16C.6 that a Market Participant has made an Irregular Price Offer, the Market Participant will be deemed to be in breach of clause 2.16A.1."*

## Inefficient market outcome

Clauses 2.16C.6, 2.16C.9 and 2.16E.1 refer to an 'inefficient market outcome'. However, the Exposure Draft does not provide any guidance or information as to how the ERA should determine an inefficient market outcome. It may even be that it's not feasible for a Market Participant to understand that their bid will lead to an inefficient market outcome. The AEC suggests that the Exposure Draft should be amended to provide clarity on how the ERA can conclude if there is an inefficient market outcome, and how to address circumstances when an inefficient market outcome was not intended.

## 2.16D.1 Offer Construction Guideline

Clause 2.16D.1 in the Exposure Draft requires the ERA to produce an Offer Construction Guideline to provide guidance to Market Participants in relation to their offer price obligations.

The AEC expressed concern about the prescriptive approach that will be used in the Offer Construction Guideline in our submission on the market power mitigation information paper<sup>8</sup> released in 2021 and in our submission on the Consultation Paper.<sup>9</sup> Such an approach contradicts the sentiments put forward by the Brattle Group in their report on how the WEM Rules can be improved for using SRMC in market power mitigation.<sup>10</sup> Energy Policy WA also released the *Directions Report: Clarifying Short Run Marginal Cost and market offer requirements in the Wholesale Electricity Market* in 2020 and noted the difficulty of including a list of specific cost components in the rules given a participant's circumstances in the market will change over time.<sup>11</sup>

Any offer construction guideline will be unable to capture all the circumstances and costs that must be recovered in offers, particularly short-term impacts such as spot fuel costs. This is especially the case as the market evolves, new technologies enter and some generation types, such as wind, solar and battery storage, may need to recover their Long Run Marginal Cost given the lack of revenue sufficiency outlined by the ERA. A prescriptive guideline will result in uncertainty and could force market participants into lower offers than optimal and contribute to the revenue sufficiency problem.

---

<sup>8</sup> See [AEC submission on Proposals for changes to Market Power Mitigation Mechanisms](#)

<sup>9</sup> See [AEC submission on Market Power Mitigation Strategy consultation paper](#)

<sup>10</sup> See [Implementing recommended improvements to market power mitigation in the WEM](#)

<sup>11</sup> See page 4, [Directions Report: Clarifying Short Run Marginal Cost and market offer requirements in the Wholesale Electricity Market](#)

On the basis that EPWA is proceeding with a prescriptive approach, the AEC considers it essential that:

1. There is sufficient opportunity for thorough consultation on the Offer Construction Guideline and there is a process for Market Participants to challenge the ERA's interpretation of items within clause 2.16D.1;
2. The consultation on the guideline should be conducted through an independent body (such as the Co-ordinator of Energy) to avoid the ERA being put in a conflicted position where it must produce a guideline and then regulate and enforce submissions; and
3. The ERA does not apply a theoretical economic approach to determine appropriate pricing standards for the WEM and instead assesses Market Participants' pricing conduct in the context of a real-world competitive market. The AEC considers that the market power mitigation framework and WEM Rules and guidelines need to allow facilities to recover at their efficient costs and a reasonable return on investment. In light of this, the Offer Construction Guideline must take into account the ERA's findings on the effectiveness of the WEM to generate sufficient revenue adequacy to sustain efficient investment. The Offer Construction Guideline should also be regularly reviewed and opened for consultation so that Market Participants can provide input on all of the cost components that should be included in the guideline as the market evolves, the generation mix changes, and revenue adequacy fluctuates.

## **Conclusion**

The AEC appreciates this opportunity to provide feedback on the Information Paper and Exposure Draft, and encourages EPWA to consider the issues raised above.

Please do not hesitate to contact Graham Pearson, Western Australia Policy Manager by email on [graham.pearson@energycouncil.com.au](mailto:graham.pearson@energycouncil.com.au) or by telephone on 0466 631 776 should you wish to discuss this further.

Yours sincerely,

### **Graham Pearson**

Policy Manager, Western Australia  
Australian Energy Council