



Independent Market Operator

**Final Market Rule Change
Report:**

**Removal of ERA Time Limit to
Publish Investigation Results**

Ref: RC_2009_15

Date: 1 September 2009

The ERA also submitted that the proposed changes will allow the Market Rules to better address market objective (d):

“to minimise the long-term cost of electricity supplied to customers from the South West interconnected system.”

The ERA submitted that the proposal will assist in minimising the long term cost of electricity by promoting fair and open competition within the market and ensuring that any anomalous behaviour is actively discouraged.

The ERA considered that the proposed changes were consistent with the other market objectives.

2.4 The Amending Rules Proposed by the ERA

The ERA proposed the following amendments to the Market Rules (~~deleted text~~, added text):

2.16.9F The Economic Regulation Authority must publish the results of its investigations ~~within 20 Business Days from receiving the~~ in response to IMO advice under clause 2.16.9B(b) or from receiving a notification from a Rule Participant under clause 2.16.8.

2.5 The IMO’s Initial Assessment of the Proposal

The IMO decided to proceed with the proposal on the basis of its preliminary assessment, which indicated that the proposal was consistent with the Wholesale Market Objectives.

3. FIRST SUBMISSION PERIOD

The first submission period for this Rule Change Proposal was between 1 April 2009 and 13 May 2009.

3.1 Submissions received

The IMO received submissions on the Rule Change Proposal from Alinta and Landfill Gas & Power (LGP). The submissions are summarised below, and the full text is available on the IMO website.

3.1.1 Submission from Alinta

In its submission, Alinta noted that it is prepared to support the Rule 135.29(P)3.56074(r)6.71788(o)]J 5818(

This amount would be distributed amongst Market Customers based on proportions of market fees;

- any potential civil penalty does not amount to the compensation for additional costs that may be incurred by individual Market Customers due to the potentially longer investigation time period;
- it is also possible that market behaviour, which subsequently may be found to be in breach of clause 6.6.3, may continue after a request from the IMO for an explanation from the Market Generator. This Rule Change Proposal may extend the period over which Market Customers incur additional costs; and
- while the ERA may conclude its investigations as quickly as possible (due to market scrutiny and incentives), this expectation should be monitored, should an investigation under clause 2.16.9B(b) or a notification under clause 2.16.8 be initiated.

The Rule Change Proposal and the Wholesale Market Objectives

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3.2 Public Forums and Workshops

No public forums or workshops were held in relation to this Rule Change Proposal during the first submission period.

3.3 Analysis into time frames used in similar investigations

There were concerns expressed at the 11 March 2009 MAC meeting regarding the complete removal of a binding timeframe. The submissions received during the first submission period were in support of the proposal, however Alinta noted that while the ERA may conclude its investigations as quickly as possible (due to market scrutiny and incentives) this expectation should be monitored. Due to the concerns expressed by the MAC, the IMO extended the timeframe for publishing the Draft Rule Change Report. After discussions with the ERA, the IMO undertook a further assessment into time periods other jurisdictions and industries allow for investigations. The details of the analysis carried out can be found in Appendix 2 of this report.

The analysis showed that there is no standard time limit for regulatory agencies to conduct investigations in the jurisdictions studied. Of the eight regulatory agencies considered, five had no time limits and three had limits varying between 90 days and 2 years.

The IMO considers that there is sufficient evidence from other jurisdictions to show that the time an investigation can take is usually well in excess of 20 days, and depending on the complexity of the issues, could take a considerable amount of time. This supports the ERA's contention that "to be effective and ensure the market is able to appropriately deal with anomalous behaviour, the time limit for the ERA to conduct an investigation and publish the results within 20 Business Days needs to be removed".

The IMO agreed that the 20 Business Day requirement should be removed from the Market Rules, however, the IMO considered that some boundaries were still required. The analysis undertaken, showed that most investigations were completed within six to twelve months. On this basis the IMO recommends that the Amending Rules be changed to:

- include a duration of six months for the investigation;
- include the provision for an extension of six months, if required (there are no set limits on the number of times the ERA can extend); and
- if extension(s) are required, the ERA is to notify the IMO who will publish an extension

as an outcome of the IMO's investigation. These changes are as follows (added text, deleted

6. SECOND SUBMISSION PERIOD

Following the publication of the Draft Rule Change Report on the IMO website, the second submission period was between 8 July 2009 and 4 August 2009.

The IMO received a formal submission from LGP during the second submission period. The submission is summarised below, with the full text available on the IMO website.

6.1 Submission from Landfill Gas & Power

LGP supported the IMO's analysis and decision to proceed with the Rule Change Proposal. In particular, LGP supported the inclusion of a six month time limit plus a facility for multiple six month extensions as a means of imposing a reasonable discipline.

7. THE IMO'S FINAL ASSESSMENT

In preparing its Final Rule Change Report, the IMO must assess the Rule Change Proposal in light of clauses 2.4.2 and 2.4.3 of the Market Rules.

Market Rule 2.4.2 outlines that the IMO "*must not make Amending Rules unless it is satisfied*

7.1 *Market Objectives*

The IMO considers that the Market Rules as a whole, if amended, will be consistent with the Wholesale Market Objectives.

Wholesale Market Objective	Consistent with objective
(a) to promote the economically efficient, safe and reliable production and supply of electricity and electricity related services in the South West interconnected system	Yes
(b) to encourage competition among generators and retailers in the South West interconnected system, including by facilitating efficient entry of new competitors	Yes
(c) to avoid discrimination in that market against partic	

that this will remove a potential barrier to entry and ensure that a competitive market is promoted.

The IMO's assessment against market objective (d) is as follows:

- (d) *to minimise the long-term cost of electricity supplied to customers from the South West interconnected system.*

After considerable discussion, the MAC agreed that the pre-rule change discussion paper ERA proposed should progress as worded.

7.5 Further Analysis and Amendments

In response to concerns raised by the MAC and during the first submissions, the IMO performed further assessments on how investigations are carried out in other jurisdictions (details in section 3.3 and section 3.4). This resulted in the IMO proposing changes to the Amending Rules.

8. THE IMO'S FINAL DECISION

The IMO's final decision is to accept the proposed amendments to clause 2.16.9F and the addition of new clauses 2.16.9FA and 2.16.9FB of the Market Rules as outlined in the Draft Rule Change Report.

8.1 Reasons for the decision

The IMO has made its decision on the following basis:

- The Amending Rules:
 - will allow the Market Rules to better address the Wholesale Market Objective (b) and (d);
 - are consistent with the remaining Wholesale Market Objectives;
 - have taken the views of the MAC into consideration;
 - have no identified costs associated with implementation;
 - have the general support of all participants provided

APPENDIX 1: FULL DETAILS OF THE PROPOSAL

In its Rule Change Proposal, the ERA submitted that as a part of its role in monitoring the effectiveness of the market, it must publish the results of its investigations, in accordance with clause 2.16.9F, within 20 business days of receiving advice from either the IMO under clause 2.16.9.B.(b) (behaviour that may affect market power) or from a Rule Participant under clause 2.16.8 (behaviour that may reduce the market effectiveness).

The ERA contended that there is no benefit in applying a time frame to an investigation for the regulator, and this could have negative impacts if the matter is not properly investigated due to a time constraint. The ERA submitted that any incentive to delay or stall the investigation would be in the interest of the entity suspected of the breach not the market regulator.

The ERA submitted that to be effective and ensure the market is able to appropriately deal with anomalous behaviour, the time limit for the ERA to conduct an investigation and publish the results within 20 business days needs to be removed. The ERA noted that every report will be unique and will have its own complexities which will affect the time taken to complete the investigation.

In its submission the ERA noted that other similar jurisdictions take significantly longer periods of time (than 20 business days) to complete any investigations. In the case of the Australian Energy Regulator (AER), on examination of the five electricity investigations published on its

APPENDIX 2: INVESTIGATION TIME LIMITS ANALYSIS

Regulatory Body	
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Name	Investigation	Date of Occurrence	Date of Publication	Approx. Duration	Comment
	Carter Holt Harvey, System Operator, TrustPower and Meridian - Settlement Report on failure to comply with dispatch instructions	Jul-07	Jul-08	12 months	

Table 3 – References used in Analysis

