



Government of **Western Australia**  
Department of **Mines, Industry Regulation and Safety**  
**Energy Policy WA**

# Market Power Mitigation Strategy

Information Paper

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Working together for a **brighter** energy future.

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# Executive Summary

## Background

This Information Paper outlines Energy Policy WA's (EPWA) final design for the Market Power Mitigation (MPM) strategy in the Wholesale Electricity Market (WEM), a review originally commenced by the Energy Transformation Taskforce (Taskforce) in 2021. This paper is intended to be read alongside the Exposure Draft of the Market Power Mitigation WEM Amending Rules, which seek to give effect to the key elements of the design.

As a result of major changes to the WEM design, in early 2021 the Taskforce conducted a review of the existing MPM mechanisms. It determined that changes to existing arrangements were necessary to address several deficiencies, including the uncertainty and costs associated with the existing ex-post framework, and the new opportunities for the exercise of the market power created by the new market.

To direct the development of a more suitable MPM mechanism, the Taskforce endorsed the application of Guiding Principles, which specified that the new framework should:

1. Be calibrated to ensure it doesn't constrain the recovery of efficient costs by energy producers while protecting consumers from the extraction of abnormal profits by Market Participants with market power;
2. Provide ex-ante regulatory certainty to promote efficient market operation while reducing the need for ex-post investigation and litigation processes;
3. Ensure the regulatory effort is proportionate to the cost and the risk being managed so that benefits of improved competition outweigh the regulatory costs; and
4. Recognise the need for ongoing review to ensure the mechanisms remain balanced and responsive to changing power system conditions and market dynamics and do not overly constrain efficient market conduct.

The Taskforce released an initial [Consultation Paper](#) outlining a high-level proposed design for the MPM mechanisms in the WEM for consultation on 31 March 2021. Submissions to the Consultation Paper presented a mixed response to the proposed design.

On 21 May 2021, the Taskforce released an [Information Paper](#) which, taking account of stakeholder submissions, reaffirmed some components of the design proposed in the Consultation Paper, while recommending that other components undergo further analysis and consultation by EPWA (the Unconfirmed Elements).

## Approach

In its approach to this analysis, EPWA placed an emphasis on meaningful stakeholder engagement, to ensure all stakeholder views were assessed and the practical implications of the proposed framework adequately considered. Throughout early-to-mid 2022, EPWA held a number of one-to-one meetings with stakeholders, and two formal sessions of the Transformation Design and Operation Working Group (TDOWG). Feedback from these sessions, as well as feedback previously given to the Taskforce, helped guide EPWA in focussing its analysis and landing on a proposed design.

EPWA subsequently released a [Consultation Paper on 1 August 2022](#) containing the analysis of the Unconfirmed Elements of the MPM Framework, as highlighted in the Taskforce's Information Paper, as well as an updated proposed design.

Eight stakeholder submissions were received in response to the Consultation Paper, and again provided a mixed response. Many submissions expressed general support for the proposed design, and provided support for key elements of the design while providing constructive feedback on others. EPWA has considered and addressed the feedback received, both within this Paper and in the table at Appendix A.

This Information Paper provides EPWA's final design, on both the Unconfirmed Elements and the design of the MPM Framework, to be implemented in the WEM following the finalisation and implementation of the amending WEM Rules.

## Case for change

The WEM remains a highly concentrated market, and the presence of an effective MPM regime will be fundamental to its continued efficient operation and to the protection of consumers.

EPWA's final design for the MPM framework does not fundamentally change the MPM mechanisms currently in place in the WEM. Instead, it seeks to provide the ex-ante certainty that has historically been lacking for Market Participants. The modified framework aims to clarify the requirements on participants and what conduct is expected of them, and provide certainty regarding the steps the regulator will take in the event market power is exercised in the WEM.

As previously noted by the Taskforce, the existing MPM mechanisms in the WEM are largely reactive, based on ex-post investigations into the exercise of market power and Market Participants' compliance with conduct obligations under the WEM Rules. The WEM Rules currently place obligations on Market Participants with market power, both in the Balancing Market and in the Ancillary Services market, to offer prices in line with reasonable expectations of their short run marginal costs (SRMC).

Market Participants have repeatedly expressed concerns about the way their current obligations are framed, mainly because market power, SRMC and "reasonable expectations" are not defined in the WEM Rules. In its final design, EPWA therefore aims to clarify participants' obligations regarding their pricing behaviour and replaces the uncertainty around SRMC with a better-expressed general trading obligation.

Under the current framework, the Economic Regulation Authority (ERA) has the role of market surveillance, and must investigate any behaviour that reduces the effectiveness of the market or indicates a breach of the WEM Rules. Historically, the ERA would form an internal view of who has, or who might have, market power. It would then monitor the offers of those participants with market power and examine any anomalous pricing behaviour.

This approach largely relies on ex-post investigations, and has led to regulatory uncertainty and delays between the ERA detecting the behaviour and remedies being delivered.

The final design for the MPM framework clarifies the obligations on participants and what conduct is expected of them. Market Participants with market power will be clearly identified and will be provided with guidance as to how to construct their offers, with reference to the protocols and guidelines applicable to the ERA and Market Participants. While retaining the ERA's market surveillance role, the framework will provide ex-ante certainty by clearly outlining the steps and matters the ERA must have regard to in determining whether there has been a misuse of market power in the WEM.

The current WEM Rules also place two price caps on the participants' offers – the Maximum STEM Price (based on gas) and the Alternative Maximum STEM Price (based on diesel). The revised MPM framework proposes that the lower price cap – the Maximum STEM Price, is abolished and a single price limit – based on the higher Alternative Maximum STEM Price plus a risk margin, is retained. This will enable all participants to include all of their variable costs in their offers.

In addition, a proposed price cap, in combination with uplift payments where necessary, in the Essential System Services (ESS) markets will ensure that Market Participants are fully compensated for the provision of their services.

EPWA's final design for the MPM strategy aims to provide certainty, and clarity on how the components of the MPM framework will be implemented and conducted. By building on the existing features of the current MPM framework applying in the WEM, EPWA considers that the approach, as outlined below, provides a fit for purpose solution in the evolving electricity market.

## Final Design Unconfirmed Elements

The following table summarises the final design of the Unconfirmed Elements identified by the Taskforce:

Unconfirmed Element	Summary of Final Design
<b>A: The suitability of the proposed three-part market power test as an objective measure of market power</b>	EPWA has concluded that a three-part market power test is the most suitable model for the WEM, based on the level of ex-ante certainty it can provide to Market Participants, its ability to allow for regulatory and administrative efficiency, and its capacity to provide the ERA with effective and transparent tools for the implementation of the MPM framework.
<b>B: Identify a ‘safe trading’ envelope, including Offer Construction Guidelines</b>	EPWA has concluded that a <b>guidance-based assessment</b> approach best aligns with the Guiding Principles. On this basis, offer assessment by the ERA under Stage 2 of the market power test will be conducted in the STEM and RTM based on principles outlined in the WEM Rules, and further assessment guidance developed, consulted on, and published by the ERA.
<b>C: Pre-approval of some offer parameters</b>	EPWA’s final design is that the MPM framework will not provide the opportunity for Market Participants to request approval by the ERA of offer parameters via a pre-approval framework. EPWA does not consider the associated competition benefits will outweigh the regulatory costs and/or risks to market efficiencies that may arise as a result of such arrangements.
<b>D: Providing guidance to the ERA in the WEM Rules</b>	<p>A balanced approach will be adopted on the level of prescription provided to the ERA in the WEM Rules in undertaking the market power test, and its market surveillance role more generally.</p> <p>For elements of the market power test that will require consideration of a range of complex matters, the ERA will be provided with some discretion as to how it conducts the relevant assessment.</p> <p>Where the ERA will need to conduct less complex analysis, procedural elements will be prescribed in the WEM Rules to provide further certainty.</p>
<b>E: Energy and FCESS Price Limits</b>	<p>The Taskforce previously determined that price limits will be set for the energy and FCESS markets, noting that these provide a backstop for other elements of the MPM framework.</p> <p>The final design adopts the majority of the Taskforce’s previous recommendations, but deviates in relation to the treatment of opportunity costs in FCESS markets, for which compensation will be calculated by the dispatch engine as well as supported through an uplift payment, rather than the inclusion of forecast Enablement Losses in offers.</p>

## Market Power Mitigation Framework – Final Design

EPWA has arrived at its final design for the MPM framework, which combines the elements previously confirmed by the Taskforce with the elements that have been confirmed following the latest round of stakeholder consultation by EPWA.

The key elements of the final design are summarised below, and will be implemented under the WEM Rules and relevant WEM Procedures and Guidelines.

### General Trading Obligations

The final MPM framework will remove the existing prohibition on a Market Participant offering prices in the STEM, Balancing Market and LFAS market in excess of its reasonable expectations of SRMC where such behaviour relates to market power. This obligation will be replaced with a requirement, the offer construction obligation, that a Market Participant with market power, must offer prices in submissions (made for STEM and RTM, including FCESS markets) that reflect the costs that a Market Participant without market power would include in forming its profit-maximising offer.

### The market power test

The ERA will be required in the WEM Rules to undertake a three-part market power test. The market power test is intended to identify where a Market Participant has exercised market power in making offers in the STEM and RTM, and such offers have resulted in inefficient market outcomes.

Stage 1 of the market power test, the gateway test, will be used to identify Portfolios with market power, both in the general market and behind binding constraints. Offer assessment will be conducted under Stage 2 of the test, with the ERA reviewing the offers made by Facilities “captured” by the gateway test, and determining whether they have been made in accordance with the offer construction obligation and relevant guidelines.

FCESS markets will not be subject to the market power test. The MPM for the FCESS markets will rely on the Supplementary Essential System Services Mechanism (SESSM) process prescribed under the new WEM Rules, in combination with the General Trading Obligations that will apply to all Market Participants.

### Enforcement consequences of the market power test and additional information requirements

If the offers of a Market Participant are determined by the ERA to have ‘failed’ the first two stages of the market power test, the ERA may undertake relevant investigation and enforcement actions under the WEM Rules for breach of the offer construction obligation. The ERA will consider the outcomes of Stage 3 of the market power test, which assesses whether there have been inefficient market outcomes as a result of the behaviour, when determining appropriate enforcement actions.

If offers have been assessed via the market power test and passed Stage 2, the ERA will be prohibited from engaging in an investigation or enforcement activities for breach of the offer construction obligation in relation to those particular offers.

### Price Limits

Energy and FCESS price limits will be set by the ERA, and reviewed every three years, as a backstop mechanism in the MPM framework based on principles and processes contained in the WEM Rules. The WEM Rules will provide the ERA discretion to nominate indexation methodologies for the price limits (such as for inflation or fuel prices), and to bring forward a review of a price limit in exceptional circumstances.

# 1. Introduction

## 1.1 Background to this paper

As part of the Western Australian Government's Energy Transformation Strategy (the Strategy), the Taskforce developed a major suite of reforms to the WEM. This included the introduction of security-constrained economic dispatch, the move to shorter trading intervals and 'gate closure', and new markets for ESS, which will be co-optimised with energy in the security-constrained economic dispatch process. While these features will improve overall efficiency and transparency, the opportunities for market power will also be increased.

The Taskforce undertook a review of the existing MPM mechanisms in early 2021, to address deficiencies and ensure they remain fit for purpose. The Taskforce released an initial Consultation Paper on the proposed design for a MPM framework for the WEM in March 2021. Following mixed stakeholder feedback, the Taskforce released an Information Paper in May 2021 that reaffirmed some elements (Reaffirmed Elements) of the proposed MPM framework, while leaving other elements unconfirmed for further analysis by EPWA (the Unconfirmed Elements).

EPWA's approach to this analysis was underpinned by the Taskforce's Guiding Principles, which determined that the MPM framework should:

1. Be calibrated to ensure it doesn't constrain the recovery of efficient costs by energy producers while protecting consumers from the extraction of abnormal profits by Market Participants with market power;
2. Provide ex-ante regulatory certainty to promote efficient market operation while reducing the need for ex-post investigation and litigation processes;
3. Ensure the regulatory effort is proportionate to the cost and the risk being managed so that benefits of improved competition outweigh the regulatory costs; and
4. Recognise the need for ongoing review to ensure the mechanisms remain balanced and responsive to changing power system conditions and market dynamics and do not overly constrain efficient market conduct.

After a series of stakeholder consultation, EPWA released a Consultation Paper on 1 August 2022 detailing its further analysis of the Unconfirmed Elements and the proposed overall design of the MPM framework. The paper presented a number of options for each Unconfirmed Element, with each option assessed against the Guiding Principles. EPWA identified a recommended option for each element, and combined these with the elements previously confirmed by the Taskforce to present a proposed design for the MPM framework.

## 1.2 Stakeholder Consultation

Industry feedback was invited on the proposed design of the MPM framework in the Consultation Paper released on 1 August 2022. The consultation period originally closed at 5:00pm WST on Monday 29 August 2022, but was extended to 5:00pm WST on Thursday 1 September 2022.

A total of 8 submissions were received from:

- Alinta Energy
- Australian Energy Council (AEC)
- Australian Energy Market Operator (AEMO)
- Collgar
- Expert Consumer Panel
- Perth Energy/AGL (Perth Energy)
- Shell Energy

- Synergy

The submissions provided a mixed response to the various elements of the proposed design of the MPM framework. EPWA has taken all feedback into consideration, and where appropriate has addressed this feedback within this Information Paper and the draft amending WEM Rules. Based on the evidence provided in the responses, in this final design EPWA has not substantially deviated from the overall design of the MPM framework as presented in the Consultation Paper. A more detailed summary of the stakeholder submissions and EPWA's response is outlined in the table at Appendix A.

EPWA also facilitated a number of one-to-one sessions with individual stakeholders, as well as two sessions of the Transformation Design and Operation Working Group (TDOWG) during its review process.

### 1.3 Scope of this paper

Through the consultation process, EPWA has considered a number of suitable options for the Unconfirmed Elements and has assessed these options against each of the Guiding Principles. This Information Paper provides EPWA's final design on both the Unconfirmed Elements and the final design of the MPM framework. This Paper also summarises the key issues raised in recent stakeholder submissions, as well as EPWA's response to those issues.

The Information Paper provides the detail of the overarching structure and purpose of the MPM framework and is designed to be read in conjunction with the Amending Rules, which have been released for consultation alongside this Information Paper. The Amending Rules, in turn, are designed to give effect to the MPM framework outlined in this Paper.

The final design does not fundamentally change the existing MPM framework, but is aimed at providing ex-ante certainty to Market Participants. It is aimed at clarifying the requirements on participants and what conduct is expected of them, and providing certainty regarding the steps the regulator will take in the event market power is exercised in the WEM.

### 1.4 Consultation on Amending WEM Rules

EPWA has published an Exposure Draft of the Market Power Mitigation WEM Amending Rules, which is intended to be read alongside this Information Paper. While there will be no further consultation on the MPM framework design (as outlined in this paper), stakeholders are invited to provide comments on the Exposure Draft. The section and clause numbers, which correspond to relevant elements of the MPM framework, have been referenced throughout the paper to aid stakeholders in their review.

A copy of Exposure Draft of the Market Power Mitigation WEM Amending Rules can be found on the [EPWA website](#). Consultation on the Draft WEM Amending Rules will close at 5:00pm (AWST) on 8 December 2022. Submissions should be sent to [energymarkets@dmirs.wa.gov.au](mailto:energymarkets@dmirs.wa.gov.au).

A session of the TDOWG has been scheduled for 29 November 2022, to facilitate discussion on the Market Power Mitigation WEM Amending Rules Exposure Draft.

Following consultation, EPWA intends to finalise the amending WEM Rules for consideration by the Minister for Energy in January 2023. Subject to approval, the MPM framework will be scheduled to commence at the New WEM Commencement Date, 1 October 2023. Some elements of the MPM framework, including transitional provisions, may be commenced earlier, as appropriate.

## 2. Final Design on Unconfirmed Elements

### 2.1 Unconfirmed Element A: The suitability of the proposed three-part market power test as an objective measure of market power

EPWA has concluded that a three-part market power test is the most suitable model for the WEM, based on its simplicity, the level of ex-ante certainty it can provide, its ability to allow regulatory and administrative efficiency, and its capacity to provide transparency regarding the implementation of the MPM framework.

Stakeholders were generally supportive of a three-part market power test as an objective measure of market power, with most comments and concerns directed at the individual components of the test (as further outlined below). At a more general level, stakeholders acknowledged that the proposed market power test provides a transparent, simple, stable and cost-effective approach.

On this basis, EPWA has not made any changes to the proposed design as a result of the feedback on Unconfirmed Element A.

As outlined in section 2.16C of the Exposure Draft of the WEM Rules, the three stages of the market power test to be implemented under the WEM Rules are:

1. The gateway test;
2. Offer Assessment; and
3. Market impact assessment.

These stages are outlined in further detail in section 3.2 below.

#### 2.1.1 The Gateway Test

As proposed in the Consultation Paper, the gateway test will be used as an initial objective structural screen to identify whether a Portfolio owned by a single entity (or related entities) is in a position to exercise market power. The gateway test should be capable of identifying all relevant Portfolios with market power over a set period. The gateway test is intended to identify the presence of market power in the STEM and Real-Time Market (RTM) only. Market power in FCESS markets will rely solely on the SESSM framework.

#### The Level at which the Gateway Test will apply

The gateway test will be run at the Portfolio level, given this approach will allow for the assessment of offers that may be coordinated under a single ownership structure, regardless of whether the relevant Facilities are registered by one or more Market Participants. This approach will mitigate potential issues with entities registering Facilities under different Market Participants to avoid scrutiny under the MPM framework.

Only one stakeholder submission responded directly to this issue and was supportive of the proposed approach.

#### The Standard Gateway Test

*Testing for market power under normal operating conditions in the STEM and RTM*

Using a Static Concentration Ratio (CR) method for the gateway test to identify market power across the WEM (local market power is discussed below) is the simplest, and will provide the most certainty and associated competition benefits to the WEM, while ensuring that offers most likely to result in adverse market outcomes are subjected to further assessment by the ERA.

While some stakeholders indicated a preference for a dynamic gateway test, there was recognition of the administrative burden that this would create. Some concern was also expressed regarding the portfolios that would, and would not, be captured by the 10% threshold. EPWA considers that the checks and balances that will occur as a result of the General Trading Obligations under clauses 2.16A.1 and 2.16A.2 of the Exposure Draft of the WEM Rules will mitigate any potential risks, as these obligations will apply to all Market Participants, not only those identified by way of the Standard or Constrained Gateway Tests.

The Standard Gateway Test will identify general market power by calculating, every 6 months, a Portfolio's share of total system capacity based on Declared Sent Out Capacity (MW) (see clause 2.16C.1 of the accompanying Exposure Draft). A threshold of 10% share of total system capacity will be used to identify Portfolios that likely hold market power. EPWA considers that this measure provides a simple, stable and proportionate ex-ante methodology to determine a Portfolio's overall market power when the test is run. Further detail is provided in the final design in section 2.

## The Constrained Gateway Test

*Testing for market power, and level of ownership, behind binding constraints*

EPWA has considered the ability of a Portfolio to exercise market power behind binding Network Constraints. This is because a single, relatively small Portfolio (or a subset of a larger Portfolio) would not be captured under the Standard Gateway Test, yet might be able to exercise "local" market power where it is required to operate to meet demand behind a binding constraint.

To address this, a distinct gateway test will be run in the RTM behind binding Network Constraints to identify whether the offers made in respect of relevant Facilities in such conditions should be subject to further assessment under subsequent stages of the market power test. The identification of Portfolios operating behind Network Constraints and the assessment of the materiality of those Portfolios are contained in clauses 2.16B.2 and 2.16C.2 of the accompanying Exposure Draft of the WEM Rules. There was no opposition expressed by stakeholders in response to this methodology, with Synergy providing support in its submission to the August 2022 Consultation Paper.

The final design will require the ERA to run an ex-post assessment of Portfolios operating behind binding Network Constraints to test whether Energy Uplift Payments have been made in respect of a Portfolio's Facilities in 10% or more of Dispatch Intervals when the relevant constraint was binding. The offers made for those Facilities at that time will be subject to further assessment under subsequent stages of the market power test.

Further detail is provided in the final design in section 2.

## Consequences of being 'captured' by the gateway test

If a Portfolio is 'caught' under the gateway test, there will be two key consequences:

- the offers made at the time the Market Participant(s) is identified as holding market power will be assessed under Stage 2 (and, potentially, Stage 3) of the market power test; and
- a Market Participant(s) responsible for the Facilities in the relevant Portfolio will be required to create and maintain records associated with its processes and systems for making market offers (including internal governance arrangements for trading conduct, compliance monitoring and enhanced record keeping on changes to offer prices and quantities) to ensure compliance with its trading obligations.

## Timing of the gateway test

The Standard Gateway Test will be conducted ex-ante to provide certainty to Market Participants associated with relevant Portfolios that they are likely to hold market power in a future period. The Constrained Gateway Test will be run ex-post against actual market outcomes.

## Application to the FCESS market

The MPM for FCESS markets will rely on the SESSM process provided for under the new WEM Rules, in combination with the General Trading Obligations that will apply to all Market Participants. Neither the gateway test, nor other components of the market power test, will be applied to the FCESS markets.

While the majority of stakeholders were silent on this issue, Synergy did express concern over relying on the SESSM as the sole MPM measure for the FCESS markets. This was due to Synergy considering the SESSM to be an ex-post solution and FCESS markets being more highly concentrated and, therefore, at greater risk of market power abuse.

EPWA considers that the SESSM framework, in combination with the General Trading Obligations, will provide adequate protection against the misuse of market power in the FCESS markets. This is because the SESSM process includes provision for the ERA to institute ex-ante MPM measures (see the SESSM Information Paper, section 7.4 for further details<sup>1</sup>), and the General Trading Obligations, as detailed in section 3.1 of this Paper, will apply to offers made in the FCESS markets.

This will avoid duplication in regulatory effort while also ensuring that the ERA can bring appropriate enforcement action against individual Market Participants.

To enhance ex-ante certainty for the relevant Market Participants, the ERA must publish its pricing benchmarks for the FCESS markets under clause 3.15A.2A of the accompanying Exposure Draft of the WEM Rules, which the ERA would apply in its considerations as to whether it would trigger the SESSM under clause 3.15A.5 of the new WEM Rules. Further detail on this is provided in section 3.3.

## 2.2 Unconfirmed Element B: Identify a 'safe trading' envelope, including Offer Construction Guidelines

EPWA has concluded that the **guidance-based assessment** approach proposed in the Consultation Paper best aligns with the Guiding Principles.

Stakeholders were generally supportive of implementing a guidance-based assessment approach in place of the existing SRMC obligation. Some submissions raised concerns about the exact nature of what will be contained in the Offer Construction Guideline.

Based on this feedback, EPWA has included additional consultation requirements on the ERA with regard to the Offer Construction Guideline under section 2.16D of the accompanying Exposure Draft of the WEM Rules. These require the ERA to invite submissions on the making of or amending the Offer Construction Guideline and publish a final report on its website providing a response to submissions and reasons for its decisions.

The ERA has published a draft version of the Offer Construction Guideline in tandem with this Information Paper for stakeholder consideration.

Under clauses 2.16C.4 and 2.16C.5 of the Exposure Draft of the WEM Rules, offer assessment by the ERA under Stage 2 of the market power test will be conducted in the STEM and RTM based on principles outlined in the WEM Rules. The ERA will also be required to have regard to the Offer Construction Guideline.

The ERA will assess whether the prices offered in submissions made by a Market Participant for a relevant Facility during relevant Trading or Dispatch Intervals (at the time the Facility was 'captured' by the gateway test) were consistent with the assessment requirements.

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<sup>1</sup> [SESSM Information Paper, 24 April 2020](#)

Matters the ERA will be required to provide guidance on in the Offer Construction Guideline include:

- All start-up and shutdown costs of a Facility;
- Variable costs of production, including:
  - fuel or charging costs;
  - fuel, charging and generating opportunity costs;
  - operational and maintenance costs that are attributable to the production of output;
  - the value of water; and
  - any other costs;
- Any relevant regulatory costs or allowances; and
- Reasonable amortisation of costs across Trading and Dispatch Intervals.

Market Participants will 'fail' the offer assessment element of the market power test where the ERA determines that prices offered were inconsistent with assessment requirements under clause 2.16C.5 of the accompanying Exposure Draft. Further information is provided in section 3.2.2.

A guidance-based approach, based on published assessment considerations and assessment processes, will provide significant improvements to certainty as compared to existing arrangements. An ongoing concern of some stakeholders was that guidance material may be unduly restrictive and would be unable to respond to changes in market conditions.

EPWA considers that the guidance-based arrangements, as adopted, will allow the ERA to amend assessment considerations contained in the guidance due to changed market conditions while providing for appropriate market consultation, as discussed above. In addition to making submissions to the ERA on the making or amending of the Offer Construction Guideline, Market Participants will also have the opportunity under clause 2.16D.5 of the accompanying Exposure Draft to consult with the ERA on offer parameters.

## 2.3 Unconfirmed Element C: Pre-approval of some offer parameters

EPWA has concluded that the MPM framework should not provide the opportunity for Market Participants to request approval by the ERA of offer parameters via a pre-approval framework. Few stakeholder responses were received in relation to this Unconfirmed Element, with those that were received being supportive of the proposed design.

EPWA does not consider that the associated competition benefits will outweigh the regulatory costs and/or risks to market efficiency that may arise as a result of such pre-approval arrangements. Combined with the additional heavy burden that may be placed on the ERA, EPWA does not consider that a pre-approval framework is consistent with the Guiding Principles.

Under the consultation framework provided under section 2.16D of the Exposure Draft of the WEM Rules, Market Participants will be able to request individual guidance from the ERA on offer parameters contained in the guidance material (the Offer Construction Guideline). Such offer parameters would likely include cost components used to form prices, and/or methods or processes related to incorporating cost components into prices and quantities within offers.

EPWA considers that such arrangements will contribute to improving the certainty of the offer assessment framework for Market Participants and help to realise associated competition benefits without the risks associated with a binding pre-approval framework.

EPWA is mindful that arrangements should not impose significant administrative burden on the ERA. The consultation framework under section 2.16D of the accompanying Exposure Draft will limit the ERA's obligation to give guidance on offer parameters, unless it is of the view that the

guidance would provide clarity not afforded by the Offer Construction Guideline, and its provision would not impose unreasonable additional burden on the ERA.

## 2.4 Unconfirmed Element D: Providing guidance to the ERA in the WEM Rules

A balanced approach will be adopted on the level of prescription provided to the ERA in the WEM Rules in relation to the market power test. Little stakeholder feedback was received on this Unconfirmed Element. What was received related to the WEM Rules providing additional guidance to the ERA on specific matters, such as the formation of ERA guidelines.

EPWA acknowledges that if the WEM Rules do not adequately prescribe the structural elements or objectives of the market power test, arrangements are unlikely to be consistent with the certainty required by the Guiding Principles. This is because investors or participants are unlikely to be provided with sufficient information as to how the market power test will operate.

Elements of the market power test will require consideration of a range of complex matters to meet the prescribed assessment objectives, most notably the offer assessment and the market impact stages of the test conducted under clauses 2.16C.5 and 2.16C.6 of the accompanying Exposure Draft. Under the WEM Rules, the ERA will be provided with some discretion in how it conducts relevant assessment for these matters. EPWA considers that this approach is more likely to result in outcomes that meet the Guiding Principles, and thus contribute to market efficiency.

In the case of the gateway test, the procedural elements for this test will be prescribed in the WEM Rules, where it is practical to do so, to provide further certainty.

Consistent with this approach, sections 2.16B, 2.16C and 2.16D of the accompanying Exposure Draft of the WEM Rules prescribe:

- the core structural elements for each stage of the market power test;
- the objectives that the relevant assessment carried out by the ERA under each stage of the market power test will seek to achieve;
- that the ERA must publish guidance outlining assessment considerations for Stages 2 and 3 of the market power test based upon the assessment objectives in the WEM Rules; and
- that the ERA must develop and publish a WEM Procedure (a Market Power Monitoring Protocol) setting out the processes it will undertake in conducting the market power test.

## 2.5 Unconfirmed Element E: Energy and FCESS Price Limits

As previously determined by the Taskforce, price limits for the energy and the FCESS markets will be set in accordance with the WEM Rules, noting that these provide a backstop for other elements of the MPM framework. Price caps will be high enough to allow participants to recover efficient costs, and the process for setting the price limits will employ a mechanism that reduces the effort and frequency of adjustment.

As explained below, stakeholder feedback was mixed in relation to the energy and FCESS price limits. However, after careful consideration of this feedback, EPWA considers that no substantive changes to the proposed design from the August 2022 Consultation Paper have been justified.

The Amending Rules in respect of the energy and FCESS price limits can predominantly be found in section 2.26<sup>2</sup> and chapter 9 of the accompanying Exposure Draft, with some consequential amendments made in other sections as required.

## 2.5.1 Energy Price Limits

A **single cost-based Energy Offer Price Ceiling**, set at the highest reasonable operating cost plus a margin, rounded up to the nearest \$100/MWh, will be implemented.

Stakeholders were generally supportive of the proposed design for a single energy price cap, although one respondent expressed concern that the price cap under the proposed design may be too high.

A single Energy Offer Price Ceiling, inclusive of a margin for risk, will ensure that all resources in the WEM will be able to recover their reasonable costs. EPWA considers that retaining a method that determines the Energy Offer Price Ceiling based on operating costs of Facilities within the market will reflect actual market requirements and so better reflect efficient market outcomes to ensure consumers are protected against the extraction of abnormal profits. This also allows for reduced regulatory effort relative to the setting of the current energy price limits, while retaining the ability to adapt to changing circumstances.

Given the rarity of price floor events, the relative newness of the process for reviewing the Minimum STEM Price, and the recent findings of reviews of energy price floors in the WEM and National Electricity Market (NEM), EPWA has decided to **retain the current approach for the determination of the energy price floor**, which will be renamed to the Energy Offer Price Floor.

The energy price floor in the WEM (the Minimum STEM Price) has been set at -\$1,000/MWh since the commencement of the Balancing Market. A periodic review process for the Minimum STEM Price was established in 2020 following a rule change process, with the ERA conducting its review according to the principles and analysis requirements set out in section 6.20 of the WEM Rules. These principles and requirements have been moved to section 2.26 in the accompanying Exposure Draft.

## 2.5.2 FCESS Price Limits

A Market Participant providing an FCESS, depending on the technology deployed, may incur some or all of the following costs:

- Efficiency costs – reflecting that the facility may be operated in a less efficient way in order to provide the FCESS (e.g. increased fuel consumption);
- Wear and tear costs – reflecting accelerated ageing, increased or accelerated maintenance costs and the risk of higher outage rates;
- Stability costs – reflecting that the facility may be operated in conditions for which stable operation may be compromised (potentially including a greater risk of unit trips); and
- Opportunity costs – where the service is provided at the expense of another value stream. Depending on energy offers and clearing prices, these costs could be an order of magnitude larger than the sum of the other costs.

There are specific circumstances where a generator may be required to run to provide a FCESS but would not otherwise be required for energy. In this situation, where the generator is required to run at its minimum generation level, it is possible that neither the energy price nor FCESS price would compensate the generator for its energy opportunity cost. This issue may be relatively

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<sup>2</sup> Section 6.20 of the current WEM Rules contains provisions related to price limit reviews. These provisions are being relocated to section 2.26 and being updated to reflect the policy positions in this Information Paper.

common at the start of the new WEM, but is expected to reduce in frequency as and when the capacity of alternative technologies grows in the SWIS.

The final design is to implement **a single FCESS Offer Price Ceiling set at the highest reasonable cost** of provision of any FCESS (excluding opportunity costs) plus a margin, rounded up, **accompanied by a FCESS Uplift Payment**.

Under this approach, the FCESS Offer Price Ceiling is the maximum price for FCESS offers, but the clearing price will be allowed to exceed the FCESS Offer Price Ceiling to allow compensation of opportunity costs consistent with the planned application of the WEMDE dispatch algorithm. EPWA considers that this approach will ensure that Market Participants are compensated for costs reflected in their offer prices. The approach also includes a separate FCESS Uplift Payment to compensate Enablement Losses.

This approach is consistent with the proposed design in the August 2022 Consultation Paper. One submitter supported the proposed design of the FCESS Offer Price Ceiling and FCESS Uplift Payment, while others expressed various concerns, including:

- that the scale of the problem of Enablement Losses may have been overstated;
- that costs related to ramping and ride-through may not be fully compensated;
- that investment signals may be muted if some costs are not reflected in the clearing price;
- additional complexity for Market Participants in bidding and settlement;
- that FCESS Uplift Payments may be manipulated by Market Participants holding market power; and
- that the proposed design may disrupt efficient dispatch.

EPWA acknowledges the current uncertainty about the scale of the problem of Enablement Losses and the complexity introduced by the proposed approach. However, EPWA considers that the chosen approach will allow for recovery of efficient costs in offers, provide the needed protection for consumers, and involve reduced reliance on the ERA to monitor and investigate FCESS offers, with these benefits outweighing any additional complexity. It will also connect the FCESS Offer Price Ceiling to operating costs, promoting ex-ante certainty and confidence in the MPM framework.

As the FCESS Uplift Payment is designed to compensate a Market Participant for its offer prices, EPWA notes that the dispatch engine should consider these costs when dispatching the power system, and that manipulative behaviour should be monitored through the remainder of the MPM framework.

EPWA acknowledges that transparency is required in relation to revenue provided outside of market clearing prices, and has included this publication requirement in clause 9.10.27M of the Exposure Draft of the WEM Rules.

The **FCESS price floor will be set at \$0/MW (or MWs for the RoCoF Control Service)**, with this value to be prescribed in the WEM Rules. It is common for frequency control service markets to have a price floor at \$0/MW, including the current LFAS Market in the WEM, the Frequency Control Ancillary Service (FCAS) markets in the NEM, and similar services in other jurisdictions including California and Texas. EPWA has not identified any circumstances in which a provider would wish to pay to provide a FCESS.

### 2.5.3 Periodic reviews of price limits

The three reviewable price limits (the Energy Offer Price Ceiling, the Energy Offer Price Floor and the FCESS Offer Price Ceiling) will be **determined on a three-yearly basis** according to principles and processes set out in the WEM Rules. To account for changing circumstances between reviews, the ERA will be able to specify an escalation process and schedule to apply for a price limit between reviews, and the rules will provide the ability for a review of a reviewable price limit to

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be brought forward under prescribed circumstances, including in response to a request by a Market Participant.

Two stakeholders suggested that the price limits should be reviewed more frequently than once in every three years, with an independent party (such as the Coordinator) responsible for deciding whether a review should be brought forward. In response, EPWA notes that the price limits provide a backstop to the remainder of the MPM framework, that the rules are being drafted in a technology-neutral manner to the maximum extent practicable, and that the Coordinator of Energy ([Coordinator](#)) will consider the appropriateness of price limits as part of the review of the effectiveness of the WEM under clause 2.16.13B of the WEM Rules.

Some stakeholders also suggested that fuel indexation should be mandated in the WEM Rules. However, the form and basis of price escalation is likely to be dependent on the specific fuel type for the highest cost facility. The Amending Rules have removed any reference to specific fuel types and provided the ERA with discretion to consider the appropriate technology upon which to base the price caps. Consequently, for consistency, EPWA considers it is appropriate to allow the ERA discretion to determine the escalation process and schedule that should apply, having regard to the technology or technologies upon which the calculations of the price caps are based.

### 3. The Combined Design of the Market Power Mitigation Framework

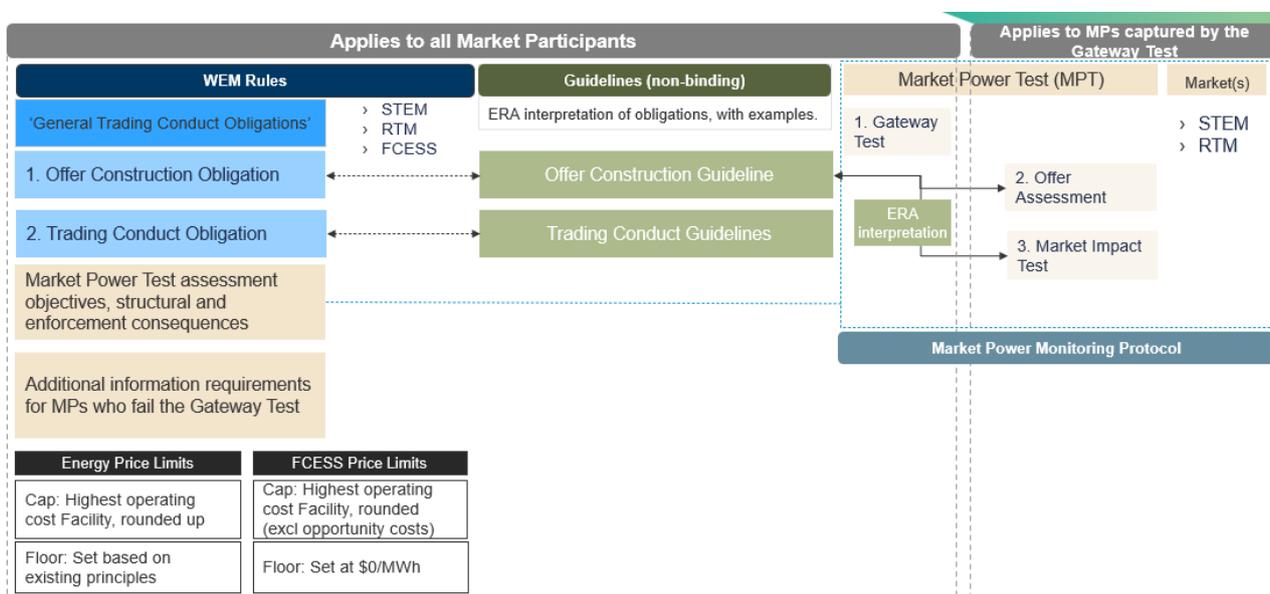
EPWA has arrived at its final design for the MPM framework through combining the elements previously confirmed by the Taskforce, and the design of the remaining Unconfirmed Elements following the latest round of stakeholder consultation by EPWA.

The Amending Rules for the MPM framework will establish General Trading Obligations, require the ERA to undertake a three-part market power test, and establish the requirements for the setting of price limits in the WEM.

These requirements will be prescribed in the WEM Rules. The ERA will also be required to develop and publish a WEM Procedure outlining a detailed structure and methodology for the market power test and develop, and consultation on, a number of Guidelines.

Figure 1 shows the overall design of the MPM framework.

Figure 1- High-level Overview of the Final Design



#### 3.1 General Trading Obligations

The MPM framework removes the existing prohibition on a Market Participant offering prices in the STEM, Balancing Market and LFAS market in excess of its reasonable expectations of SRMC where such behaviour relates to market power (clauses 6.6.3, 7A.2.17 and 7B.2.15 of existing WEM Rules). These obligations will be replaced with a requirement under clause 2.16A.1 of the Exposure Draft (the Offer Construction Obligation) that a Market Participant with market power must offer prices in Submissions (made for STEM and RTM, including FCESS markets) that reflect the costs that a Market Participant without market power would include in forming its profit-maximising offer.

The changes will also refine existing obligations in the Balancing and LFAS markets, under clauses 7A.2.13 and 7B.2.11 of the existing WEM Rules respectively, that require the making of good faith offers, prohibit acting in a manner that may lead other participants to be misled or deceived, and prohibit influencing constrained prices and quantities in the Balancing Market.

The Trading Conduct Obligation, under clause 2.16A.2 of the accompanying Exposure Draft of the WEM Rules, will prohibit conduct related to the making of Submissions for the supply of electricity that: were in bad faith; were false, misleading, or likely to mislead; or distorted or manipulated prices in the market.

General Trading Obligations will apply to the STEM and RTM (including FCESS markets), and to all Market Participants, regardless of whether the Facilities registered to that Market Participant are within a Portfolio that is 'caught' under Stage 1 of the market power test (the gateway test).

Offers and conduct not assessed through the market power test would still be subject to potential investigation and enforcement action by the ERA, for breach of the General Trading Obligations. This is to ensure the ERA has the necessary flexibility to examine potential conduct related to market power not identified through the gateway test, as this test is unlikely to capture all instances of the ability to exercise market power in the WEM.

Clauses 2.16D.1 and 2.16D.2 of the accompanying Exposure Draft of the WEM Rules will require that the ERA consults on and publishes guidelines setting out how the ERA interprets the General Trading Obligations, and provides a range of appropriate examples of compliant and non-compliant conduct (the Offer Construction Guideline and the Trading Conduct Guideline). The ERA will be able to update these guidelines following prescribed consultation with stakeholders. Figure 3 provides an overview of the General Trading Obligations contained in the WEM Rules and will apply to STEM, RTM and FCESS market.

**Figure 3 – General Trading Obligations**

Applicable to all Market Participants regardless of whether a Market Participant is 'caught' under the Gateway Test (Stage 1 of the Market Power Test)	
<b>Offer Construction Obligation</b>	This will replace the existing SRMC obligation in the STEM, Balancing Market, and LFAS market. It will require a Market Participant to offer prices in its Submissions that reflect the costs <b>that a Market Participant without market power</b> would include in forming its profit-maximising offer.
<b>Trading Conduct Obligation</b>	Similar to existing good faith requirements and misleading conduct prohibitions. It will require that a Market Participant must not – in making a Submission, or supplying electricity – engage in conduct that: <ul style="list-style-type: none"> <li>• is false, misleading, or likely to mislead;</li> <li>• is undertaken in bad faith; or</li> <li>• distorts or manipulates market prices.</li> </ul>

The ERA will also be required to develop and publish an **Offer Construction Guideline** and **Trading Conduct Guideline** outlining a detailed structure and methodology for the test in its Market Power Monitoring Protocol.

### 3.2 The Market Power Test

The ERA will be required, under section 2.16C of the accompanying Exposure Draft of the WEM Rules, to undertake a three-part market power test. The market power test is intended to identify if a Market Participant has exercised market power through offers made in Submissions in the STEM and RTM, and such offers have resulted in inefficient market outcomes. FCESS markets will not be subject to the market power test and will rely on the SESSM process prescribed under the new WEM Rules, in combination with the General Trading Obligations that will apply to all Market Participants.

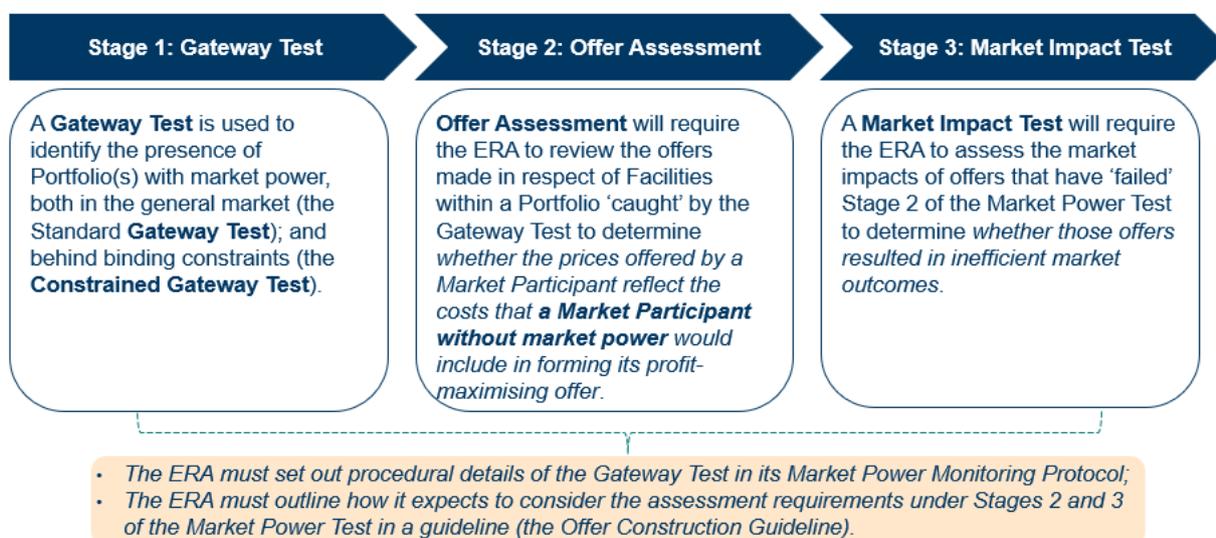
The market power test will consist of the following three stages:

1. The gateway test;
2. Offer Assessment; and

### 3. The market impact test.

Each of these three stages is summarised in Figure 4.

**Figure 4 – The three stages of the market power test**



### 3.2.1 Stage 1: The Gateway Test

The gateway test, conducted under section 2.16C of the Exposure Draft of the WEM Rules, will be made up of the Standard Gateway Test and the Constrained Gateway Test. The different tests recognise the differences in a participant's ability to exercise market power behind Network Constraints, relative to unconstrained situations.

The requirement for the ERA to conduct the gateway test as part of the market power test, and the high-level methodology for the gateway test, will be prescribed in the WEM Rules. The ERA will also be required to develop and publish a WEM Procedure, under clause 2.16D.14 of the accompanying Exposure Draft of the WEM Rules (the Market Power Monitoring Protocol), outlining a detailed structure and methodology for the gateway test.

#### The standard gateway test

The final design adopts a **static concentration ratio** approach for the Standard Gateway Test to identify the Facilities that will proceed to assessment under Stage 2 and (where relevant) Stage 3 of the market power test.

The Standard Gateway Test requires the ERA to identify all Portfolios (being one or more Registered Facilities under the ownership of an entity or related entities) operating in the WEM twice yearly, following Reserve Capacity Testing. The ERA will then calculate the proportion of each Portfolio's aggregate Declared Sent Out Capacity (DSOC), being the sum of the DSOC for all Facilities within that Portfolio, relative to the total system capacity, being the sum of the DSOC for all Portfolios in the WEM.

The threshold percentage for a Portfolio to fail the test will be set at 10% or greater of total system capacity. Any Portfolio meeting this threshold will be deemed to be a 'Material Portfolio'. The Market Participant, or Market Participants, responsible for the Facilities within a Material Portfolio will be notified by the ERA and the offers made by those Market Participants for relevant Facilities will be subject to offer assessment, under clause 2.16C.4 of the Exposure Draft of the WEM Rules, (with further assessment under Stage 3 if necessary). This will also place requirements on those Market Participants to keep additional information and implement internal controls, as described in section 3.4.

The DSOC of Facilities will not be modified (e.g. reducing the capacity of intermittent generation based on capacity factor). This is because EPWA considers that there will be periods where intermittent generation will be producing at full capacity, so the full capacity will be considered in assessing whether the Portfolio is capable of exercising market power.

For clarity, this formulation of the gateway test applies on a forward basis only.

## The Constrained Gateway Test

Market Participants with Facilities operating behind binding Network Constraints (a Constrained Portfolio) have a significant opportunity to exercise market power when they are the only Facilities that can be dispatched behind the Network Constraint. While the Constrained Portfolio may not impact the overall market clearing price, a significant monetary advantage can be gained when the Constrained Portfolio is in a dominant position behind the binding constraint. This is due to the Constrained Portfolio being in a position to make unreasonably high offers and receive Energy Uplift Payments.

Using the same 10% Portfolio static concentration ratio assessed against total market capacity, as in the Standard Gateway Test, is unlikely to be a suitable method to identify market power in constrained conditions, given it will not consider the relative concentration of Constrained Portfolios.

In order to capture Constrained Portfolios using a concentration ratio, it would be particularly onerous to identify the relevant threshold level for each actual and potential Network Constraint, and tailor the threshold for each.

An alternative gateway test (the Constrained Gateway Test) will be run behind individual Network Constraints to identify whether RTM Submissions made by Market Participants for Facilities operating behind those constraints will be assessed further under the market power test.

The Constrained Gateway Test will, in accordance with clause 2.16C.2 of the accompanying Exposure Draft of the WEM Rules, calculate (on an ex-post basis) the Constrained Uplift Payment Ratio. This ratio identifies the Dispatch Intervals in which the Facilities within each Constrained Portfolio (in aggregate) received Energy Uplift Payments as a percentage of the total number of Dispatch Intervals in which the identified Network Constraint bound. The Constrained Gateway Test will be applied during a Rolling Test Window (being a period of three months), and a Fixed Assessment Period, being at least seven consecutive days within a Rolling Test Window. To be assessed under the Fixed Assessment Period, the Network Constraint must have bound for the full period of seven consecutive days.

If Energy Uplift Payments have been made in respect of those Facilities in 10% or more of the Dispatch Intervals within a Rolling Test Window and/or a Fixed Assessment Period, the Constrained Portfolio will be deemed to be a Material Constrained Portfolio. Offers made for those Facilities will be subject to further assessment under the market power test at clause 2.16C.4 of the Exposure Draft.

The Constrained Gateway Test will require the ERA, in accordance with clauses 2.16B.2 and 2.16C.2 of the accompanying Exposure Draft of the WEM Rules, to:

- Identify each Constrained Portfolio operating behind each Network Constraint within a Rolling Test Window;
- Identify if Energy Uplift Payments have been made in relation to Network Constraints;
- Identify the Dispatch Intervals over which those Network Constraints were binding;
- Identify the Dispatch Intervals in which Energy Uplift Payments were provided in respect of relevant Facilities within a Constrained Portfolio;
- For each Constrained Portfolio calculate the Constrained Uplift Payment Ratio;
- Identify any Constrained Portfolio for which the Constrained Uplift Payment Ratio is 10% or greater in either (or both of) the Rolling Test Window or the Fixed Assessment Period; and

- Notify Market Participants 'caught' by the Constrained Gateway Test.

It will not be possible to accurately forecast when Network Constraints will occur, as such the Constrained Gateway Test will only be conducted on an ex-post basis. Additional information and internal controls requirements will apply to Market Participants caught by the Constrained Gateway Test based on the ex-post assessment.

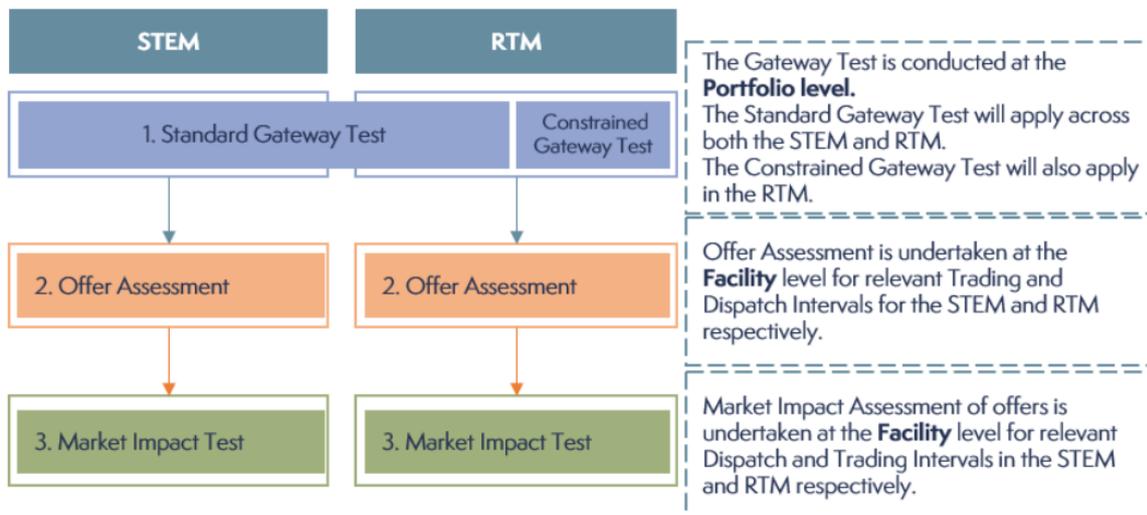
### 3.2.2 Stage 2: Offer Assessment

Stage 2 of the market power test (offer assessment) will apply to the prices offered by the responsible Market Participant in respect of relevant Facilities 'captured' by the Standard Gateway Test or Constrained Gateway Test (i.e. when the Facilities are part of a Material Portfolio or a Material Constrained Portfolio).

Where offer assessment must occur in relation to 'captured' Facilities, the ERA must make a determination under clause 2.16C.5 of the Exposure Draft WEM Rules. The ERA must determine whether the prices offered by a responsible Market Participant in its Portfolio Supply Curve (STEM) or RTM Submissions (RTM) are inconsistent with the prices a Market Participant without market power would include in forming its profit-maximising Portfolio Supply Curve or RTM Submission for the same.

As illustrated in Figure 2, offer assessment for Facilities within a Material Constrained Portfolio will only be undertaken for energy prices in respect of RTM Submissions. This is because Energy Uplift Payments are made in respect of the RTM energy market only, and so are not relevant to the STEM. Assessment of FCESS prices is conducted via the SESSM process.

**Figure 2: Assessment within the stages of the market power test**



Offer assessment will be conducted on an ex-post basis (i.e. following relevant market settlement) in accordance with the requirements within section 2.16C of the Exposure Draft of WEM Rules, and the Market Power Monitoring Protocol developed and published by the ERA. The Market Power Monitoring Protocol would document the process the ERA would follow in carrying out the market power test, including offer assessment.

The ERA will also be required to provide guidance in the Offer Construction Guideline on the determination it must make under offer assessment. The Offer Construction Guideline must provide guidance as to how the ERA, in conducting offer assessment, will consider:

- all start-up and shutdown costs of a Facility, including the costs of fuel, water, internal power, additional labour and lost asset value directly attributable to the start-up or shutdown;
- variable costs of production, including:
  - fuel or charging costs;
  - opportunity costs;
  - operational and maintenance costs that are attributable to the production of output;
  - the value of water; and
  - any other costs;
- any relevant regulatory costs or allowances; and
- reasonable amortisation of costs across Trading and Dispatch Intervals.

If there are multiple Facilities within a Material Portfolio or Material Constrained Portfolio, offer assessment will be conducted for all relevant prices offered in respect of those Facilities under clause 2.16C.4 of the accompanying Exposure Draft of the Market Power Mitigation Amending WEM Rules.

EPWA considers that the ERA's existing information gathering powers are sufficient to enable the collection of information from relevant Market Participants to carry out the determination.

As noted above, the MPM framework would rely upon relevant monitoring and review of inefficient RTM outcomes for FCESS markets, with potential determination by the ERA to trigger the SESSM process under clause 3.15A.2, and/or investigation by the ERA for breach of the General Trading Obligations.

## Consequences of the offer assessment stage

In accordance with clause 2.16E.1 of the Exposure Draft of the WEM Rules, if the ERA determines, under clause 2.16C.5 of the Exposure Draft, that relevant prices within a responsible Market Participant's STEM or RTM Submission are consistent with the assessment requirements, the prices submitted would not be subject to further investigation or compliance action by the ERA for breach of the Offer Construction Obligation. However, conduct and/or prices not assessed through the offer assessment stage of the market power test will still be subject to potential investigation and enforcement action by the ERA for breach of the General Trading Obligations.

If the ERA has made a determination that the prices constitute an Irregular Price Offer, under clause 2.16C.5 of the Exposure Draft of the WEM Rules, the ERA would be required to conduct market impact assessment under Stage 3 of the market power test (see section 3.2.3 below). If the Irregular Price Offer is found to have resulted in an inefficient market outcome, the ERA will be able to investigate under clause 2.13.27, and take appropriate enforcement action under clause 2.13.36 of the WEM Rules. The ERA will be required to publish details of its determination in respect of the offer assessment element of the market power test following completion of all stages of the market power test.

## Consultation Framework (offer assessment)

Under clause 2.16D.5 of the Exposure Draft of the WEM Rules, a Market Participant responsible for a Facility in a Material Portfolio or Material Constrained Portfolio will be provided with the opportunity to request that the ERA provides guidance on matters or processes contained in the Offer Construction Guideline as they relate to the offer assessment element of the market power test.

A Market Participant may initiate this process via a written request to the ERA that:

- identifies the matters and/or processes contained in the Offer Construction Guideline on which the Market Participant seeks guidance;
- provides reasons the guidance is sought including, where relevant, the uncertainty that the Market Participant considers currently exists in the Offer Construction Guideline; and
- if relevant, provides supporting materials that illustrate or evidence the matters raised in the request.

The ERA will also be able to specify other matters required for the written request in the Market Power Monitoring Protocol.

Upon receipt of the written request, the ERA must under clause 2.16D.7 of the Exposure Draft of the WEM Rules use reasonable endeavours to provide guidance addressing the matters raised in the request within 20 business days unless, acting reasonably, it considers:

- the Offer Construction Guideline provides sufficient guidance on the matters raised by the Market Participant in its request;
- the Market Participant has failed to supply adequate information in its written request;
- the provision of guidance sought by the Market Participant would impose unreasonable or excessive costs on the ERA; or
- the request made by the Market Participant is substantially similar to a previous request made by the same Market Participant and considered by the ERA.

As part of the process, the ERA may request further information from the Market Participant. If it does so, the 20 business day timeline will be reset.

The guidance provided by the ERA would not be binding upon it, or the Market Participant. However, there would be an expectation that, if a Market Participant operated consistently with the guidance provided by ERA, the ERA would take this into account during offer assessment. The provision of guidance to a Market Participant would also trigger a requirement for the ERA to consider whether the Offer Construction Guideline should be amended to account for the guidance.

### 3.2.3 Stage 3: The Market Impact Test

Stage 3 of the market power test is referred to as the market impact test and will require the ERA to make a determination as to whether offers that have been determined to be non-compliant in Stage 2 of the market power test have resulted in inefficient market outcomes.

If a Market Participant has offered prices for a Facility (or Facilities) in a Material Portfolio or Material Constrained Portfolio that have been determined by the ERA to be inconsistent with the offer assessment requirements under Stage 2 of the market power test, clause 2.16C.6 of the Exposure Draft of the WEM Rules would require the ERA to assess whether those prices resulted in 'inefficient market outcomes'.

The "inefficient market outcomes" assessment principle underpinning the ERA's determination at this stage of the market power test is consistent with that underpinning the ERA's decision to trigger the SESSM under clause 3.15A.2 of the new WEM Rules. Rather than considering the efficiency of offers (as offers will have already been assessed under Stage 2 of the market power test) the objective of the market impact test is to assess the impact of non-compliant prices on market outcomes. These market outcomes would include market clearing prices and Energy Uplift Payments, as well as quantities scheduled in respect of Market Participants in the STEM Auction or the Dispatch of Facilities in the RTM.

The ERA will be required to publish guidance in the Offer Construction Guideline, under clause 2.16D.1 of the accompanying Exposure Draft of the WEM Rules, setting out how it intends to conduct the assessment required under the market impact test, taking into account the objectives in the WEM Rules. As with other stages of the market power test, the process undertaken by the

ERA to conduct the market impact test would be published in a WEM Procedure (the Market Power Monitoring Protocol).

### 3.3 Market Power in FCESS Markets

MPM for the FCESS markets will rely on the SESSM process provided for under the new WEM Rules, in combination with the General Trading Obligations that will apply to all Market Participants.

It is not proposed that the gateway test, or other components of the market power test, be applied to the FCESS markets. This will avoid duplication in regulatory effort while ensuring that the ERA can bring appropriate enforcement action against individual Market Participants for breach of the General Trading Obligations.

Under clause 3.15A.5 of the WEM Rules, the ERA must document in a WEM Procedure the process it will follow to identify inefficient RTM outcomes, which may include:

- comparing individual Facility FCESS offers with:
  - FCESS offers for similar Facilities;
  - expected or known costs for that Facility;
  - offers from the same Facility in different time periods;
  - historic offers of FCESS in the RTM;
  - the FCESS offer construction guidelines published by the ERA; and
  - FCESS price benchmarks published by the ERA (see below);
- comparing existing Facility costs with potential new facility entrant costs;
- analysis of the information received from FCESS expressions of interest forms submitted in accordance with section 3.15B (as part of a market sounding process conducted by AEMO at least every two years to provide a benchmark for market pricing of FCESS); and
- comparing FCESS market outcomes with other relevant jurisdictions.

The ERA must, under clause 3.15A.2A of the Exposure Draft of the WEM Rules, publish its internal pricing benchmarks for the FCESS markets, which it may consider as part of the process it will undertake to identify inefficient Real-Time Market Outcomes under clause 3.15A.2 (consistent with the Taskforce recommendation in its May 2021 Information Paper).

When the ERA triggers the SESSM, it must publish:

- the rationale for its conclusion that ESS market outcomes may not be consistent with efficient market operation;
- a view on whether the inefficiency in the ESS market is restricted to certain time intervals (e.g. day of week, time of year), or is present at all times; and
- an estimate of the difference in cost of ESS under current market outcomes and under efficient market operation.

More information on the SESSM can be found in the Taskforce's Supplementary ESS Procurement Mechanism Information Paper.<sup>3</sup>

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<sup>3</sup> [Supplementary ESS Procurement Mechanism \(www.wa.gov.au\)](http://www.wa.gov.au)

## 3.4 Additional Information and Internal Control Requirements

If a Market Participant is notified by the ERA that a Facility that it is responsible for is within a Material Portfolio or a Material Constrained Portfolio, it triggers the requirement under clause 2.16C.3 of the Exposure Draft of the WEM Rules that, within three months of a notification, it must:

- create and maintain verifiable records regarding the methods and inputs used to develop prices in STEM Submissions or Standing STEM Submissions; and
- create and maintain verifiable records of the methods and inputs it has used to develop the prices, quantities and Ramp Rate Limits in its RTM Submissions.

The records must include for relevant Facilities a description of the expected run times, fuel costs, load forecast and any other details listed in clause 2.16D.1(a)(i).

Market Participants will also be required to create and maintain verifiable records related to the internal governance arrangements in place to ensure compliance with clause 2.16A.1 of the Exposure Draft.

Market Participants, subject to these additional obligations, must also record information currently required for subsequent RTM Submissions (those within and outside the Pre-Dispatch Schedule Horizon) in a contemporaneous and verifiable manner. The information must be sufficient to identify the time at which the changed circumstances that gave rise to the subsequent Real-time Market Submission, and the time at which the Market Participant became aware of the circumstance.

Details of these additional requirements are to be outlined in guidance and the WEM Procedure (the Market Power Monitoring Protocol) to be developed and published by the ERA. Market Participants who are not obligated to implement these processes may do so voluntarily.

## 3.5 Enforcement consequences of the market power test

If prices within offers have been assessed in Stage 2 of the market power test and the ERA has not made a determination that those prices are non-compliant, under clause 2.16E.1 of the Exposure Draft of the WEM Rules, the ERA will be unable to commence investigation or enforcement activities for breach of the Offer Construction Obligation in relation to those prices. Prices not assessed under the market power test may be subject to the ERA investigation and enforcement, including for breaches of the Offer Construction Obligation.

If the price offers of a Market Participant are determined by the ERA to have 'failed' offer assessment under Stage 2 of the market power test, this will constitute a breach of clause 2.16A.1 of the Exposure Draft under clause 2.13.27(d).

## 3.6 Price Limits

The objectives stated by the Taskforce for the price limits in the WEM were that they are high enough so that all participants can recover their efficient variable costs, and that the process for setting price limits employs a mechanism that reduces the effort and frequency of adjustment. The Taskforce also indicated that a single energy price cap should apply, in place of the current dual price caps (known as the Maximum STEM Price and Alternative Maximum STEM Price).

A single cost-based energy price cap achieves the objectives of the Guiding Principles. EPWA considers that retaining a method that determines the price cap based on costs of Facilities operating in the market will better reflect efficient market outcomes.

On the basis that the price limits are a backstop for the remainder of the MPM framework, the price caps will include margins that allow for reduced frequency of review, thus reducing regulatory effort relative to the setting of the current energy price limits while retaining the ability to adapt to changing circumstances.

Given the rarity of price floor events, the relative newness of the process for reviewing the Minimum STEM Price, and the recent review findings in the WEM and NEM, the final design implements only one change to the determination of the energy price floor. The Minimum STEM Price is to be determined on a three-yearly basis going forward, according to the principles and process currently set out in the WEM Rules. This supports the objective of reducing the regulatory effort and frequency of adjustment.

While it is essential that opportunity costs in the energy market are compensated for facilities providing FCESS, these opportunity costs have the potential to be orders of magnitude greater than the direct costs of FCESS provision. EPWA has concluded that the FCESS price cap should be determined without consideration of these opportunity costs, but that these are to be compensated automatically through two mechanisms:

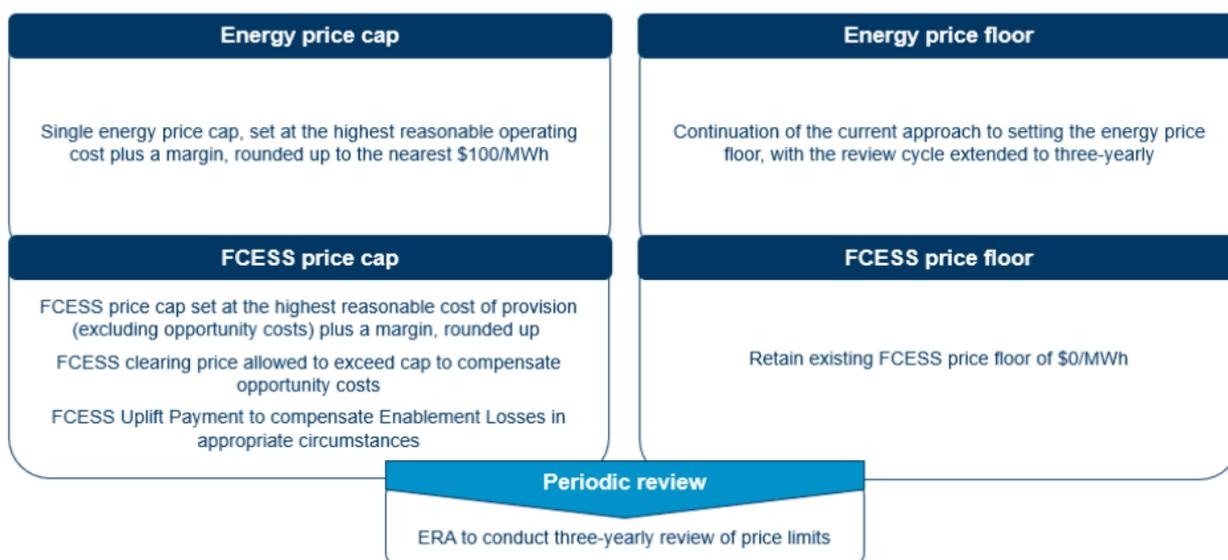
- If the dispatch algorithm calculates these opportunity costs, these will be accounted for in the FCESS clearing price, which will be allowed to exceed the FCESS price cap so that the opportunity costs are compensated.
- If the dispatch algorithm does not calculate these opportunity costs, for example if a Facility is required to run to provide a FCESS but is not otherwise required for energy, an FCESS Uplift Payment will be made to that Facilities.

This approach is the most consistent with the Guiding Principles, as it provides appropriate protection against extraction of abnormal profits while allowing for recovery of efficient costs. It also links the FCESS price cap to operating costs, promoting ex-ante certainty and confidence in the MPM framework, and significantly reduces the regulatory effort in monitoring the FCESS markets.

The FCESS price floor should be set at \$0/MW (or MWs for the RoCoF Control Service). EPWA considers that this approach is unlikely to constrain the recovery of efficient costs (Principle 1), given that no circumstances have been identified in which a provider would wish to offer at negative prices. This minimises regulatory effort (Principle 3), for a parameter for which flexibility does not appear to be necessary, by fixing the price floor in the WEM Rules.

Figure 5 provides a summary of the Price Limits.

**Figure 5 - Summary of the Price Limits**



## 3.7 Roles and Responsibilities

### Roles and Responsibilities under the MPM Framework

#### ERA

- Develops and consults on an Offer Construction Guideline that sets out its:
  - interpretation of the Offer Construction Obligation, providing examples of compliant and non-compliant offers; and
  - approach to offer assessment under Stage 2 of the market power test (which would include guidance on how the ERA expects a participant would construct its offers) and the market impact test under Stage 3 (ex-ante)
- Develops and consults on a Trading Conduct Guideline that provides its interpretation of the Trading Conduct Obligation, and examples of compliant and non-compliant conduct to indicate to Market Participants what is acceptable and not acceptable trading conduct (ex-ante)
- Develops and consults on a new WEM Procedure, the Market Power Monitoring Protocol that: sets out the processes it would undertake to carry out the stages of the three-part market power test, and further defines the additional information and internal control requirements that apply to Market Participants caught by the gateway test (ex-ante)
- Consults with and provides guidance to Market Participants on values for specific offer components, and/or the methods identified in the Offer Construction Guideline (ex-ante)
- Collects information from Market Participants and/or AEMO necessary for it to carry out the market power test (ex-ante/ex-post)
- Carry out the Standard Gateway Test (Stage 1 of the market power test) on a twice-yearly basis, and the Constrained Gateway Test on a three-monthly basis, in accordance with the WEM Rules and the Market Power Monitoring Protocol, to identify Portfolios that have market power in the market and behind constraints (ex-ante/ex-post)
- Carries out offer assessment (Stage 2 of the market power test) in accordance with the WEM Rules, the Offer Construction Guideline and the Market Monitoring Protocol (ex-post)
- Carries out the market impact test (Stage 3 of the market power test) on a periodic ex-post basis in accordance with the WEM Rules and the Market Monitoring Protocol (ex-post)
- Sets and reviews energy and FCESS price limits as a backstop mechanism (ex-ante)
- Undertake enforcement action against Market Participants who have breached their WEM Rules obligations (ex-post)

#### Market Participants

- Comply with the General Trading Obligations with reference to the Offer Construction Guideline and Trading Conduct Guideline issued by the ERA (ex-ante)
- Ensure offers are consistent with guidance provided in the Offer Construction Guideline (ex-ante)
- If captured by the gateway test, implement additional information records and internal controls, in accordance with the WEM Rules and Market Power Monitoring Protocol, to support self-monitoring and prevention of potential market power exercise (ex-ante)
- Monitor and report on their own trading practices (ex-ante)
- Engage with the ERA to obtain guidance on matters in the Offer Construction Guideline (ex-ante)
- Assist and provide information to the ERA in any investigations (ex-post)

#### AEMO

- Provides information to the ERA as necessary for it to carry out the market power test and other monitoring functions

#### Coordinator of Energy

- Periodically reviews the effectiveness and efficiency of the MPM mechanisms to ensure they remain fit-for-purpose and continue to balance the need for recovery of efficient costs while protecting consumers from inefficient market outcomes

## Appendix A. Table of Stakeholder Submissions and EPWA Responses

Submission	Comments/Issue Raised	Requested Changes/Action	EPWA Responses
<b>General Comments</b>			
<b>Perth Energy</b>	<b>General:</b> Supports EPWA's approach and thinks it provides a balance between limiting the misuse of market power without being overly prescriptive and costly.	<b>Notes:</b> It is essential that appropriate investment signals are communicated to the market (especially with the scheduled closure of Muja)	<p>The adequacy of the investment signals in the WEM are being modelled and considered in the RCM Review. The proposed change to the energy price limits in the MPM framework review will ensure that even the highest cost resource in the WEM will be able to recover all of their variable costs in the energy markets.</p> <p>EPWA's final design does not fundamentally change the MPM mechanisms currently in place in the WEM. Instead it:</p> <ul style="list-style-type: none"> <li>• defines market power and replaces the uncertainty around SRMC with a better-expressed General Trading Obligation</li> <li>• clarifies the obligations on participants and what conduct is expected of them</li> <li>• provides certainty and clarity on how the components of the MPM framework will be implemented and conducted by the ERA.</li> </ul>
<b>Perth Energy</b>	<b>General:</b> Market power has been a significant issue with price suppression in the reserve capacity market. Energy and ESS prices are forecast to fall as more renewables enter the market, placing greater reliance on reserve capacity income to underpin new investment.	<b>Recommends:</b> EPWA to consider this matter in depth to ensure that we do not face a shortfall in private investment or inappropriate low returns for Government investment.	
<b>Expert Consumer Panel (ECP)</b>	<b>Consumer context:</b> WA households and businesses are facing acute cost increases and supply chain challenges - an open and competitive WEM is critical for investor confidence and attracting the billions of dollars of private capital needed to replace retiring fossil fuel generation.		<p>A transparent and robust MPM strategy is aimed at facilitating competition in the WEM, and increasing public trust in the competitive market. EPWA notes the Government commitment to keep an increase of residential tariffs to the CPI.</p>
<b>Expert Consumer Panel</b>	<b>Public trust:</b> MPM framework is critical for public trust in the market. Recent events in the NEM highlight the damage that the perception of anti-competitive behaviour by energy companies can do to the public trust and confidence in the market		

Submission	Comments/Issue Raised	Requested Changes/Action	EPWA Responses
<b>General Comments</b>			
<b>Expert Consumer Panel</b>	<p><b>General:</b> absence of a fit for purpose MPM regime is a major concern for consumers. The protracted process to resolve the action brought by the ERA against Synergy - still going five years later - is unacceptable and continues to highlight the urgent need for reform</p> <p><b>General:</b> supports the model outlined in the consultation paper which seeks to address the key deficiencies outlined by the Taskforce</p>		Noted. A key objective of the refinements to the WEM MPM strategy is to provide ex-ante certainty, and reduce the process timeframes and the need for protracted and costly litigation.
<b>Shell Energy</b>	<p><b>General:</b> Appreciates that the majority of our feedback from the first round of consultation in May 2021 has been addressed</p>		Noted
<b>Collgar</b>	<p><b>General:</b> agrees that existing framework does not provide sufficient guidance on what is acceptable bidding behaviour and costs that can be recovered under SRMC requirement</p>		Noted
<b>Collgar</b>	<p><b>Guiding Principles:</b> agrees particularly with the ex-ante elements to provide certainty. Notes difficulty in balance between certainty and flexibility to account for new technologies.</p>	<p><b>Note:</b> cost of operating in a given real-time market must be able to be recovered from that real-time market without needing to obtain revenue from other streams (e.g. another real-time market(s), the RCM or other outside the WEM)</p>	<p>The proposed amendments to existing arrangements should provide greater confidence to Market Participants of their ability to recover operating costs from energy and FCESS markets.</p> <p>This approach is coupled with the proposed energy price limits framework that provides that price caps are based on the highest cost Facility or Facilities in the SWIS, focused on the operational circumstances that are likely to result in the highest operating costs. This is expected to allow generators with the highest production costs to recover their variable operating costs for the provision of energy while also allowing Facilities with lower variable costs to recover a portion of their fixed costs.</p>

Submission	Comments/Issue Raised	Requested Changes/Action	EPWA Responses
<b>General Comments</b>			
<b>Alinta Energy</b>	<b>General:</b> broadly supports principles of proposed MPM strategy however has concerns with a number of components (these are detailed in below sections)		Noted
<b>Synergy</b>	<b>General:</b> supports replacement of SRMC and the proposed three-part market power test (including approach to gateway test).		Noted

Submission	Comments/Issue Raised	Requested Changes/Action	EPWA Responses
<b>Adequacy of revenue to support investment</b>			
<b>Shell Energy</b>	<b>ERA Revenue Adequacy:</b> quotes ERA paper and notes there is already insufficient revenue for generators in the WEM and it would be helpful if EPWA considered the combined outcomes of the Reserve Capacity Mechanism (RCM) review, the proposed policy principles (high emissions technology penalty) and recommendations from ERA report and MPM strategy design.	<b>Notes:</b> concern that the number of papers running concurrently for consultation reduces the opportunity for stakeholders to provide effective feedback and to properly consider the overall impact. Encourage EPWA to provide sufficient time for stakeholder engagement on final design.	The ERA report makes it clear that its report was based on analysis of incentives for investment in emission reducing technologies to achieve the decarbonisation goals in the future. It was not based on analysis of the revenue sufficiency of the current technologies in the market.  The refinements of the MPM strategy are to provide clarity and certainty regarding how the strategy is being applied in practice. There are no changes to the strategy that would lead to the reduction of revenues for the various technologies in the WEM.
<b>Australian Energy Council</b>	<b>ERA Revenue Adequacy</b> - quotes extensively from the ERA report including... "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"	<b>Recommends:</b> <b>1.</b> Sufficient time for stakeholder consultation on the Information Paper <b>2.</b> EPWA hold further consultation with stakeholders on the MPM design after the RCM review has concluded and the Coordinator has designed the proposed carbon emission penalties.	The proposed change to the energy price limits in the MPM framework will ensure that all resources in the WEM will be able to recover their costs.
<b>Australian Energy Council</b>	<b>ERA Revenue Adequacy:</b> with the ERA identifying there is already insufficient revenue for generators in the WEM, EPWA should consider combined consequences of the RCM review, the new policy principles, civil penalties framework, recommendations from the ERA's review of revenue adequacy, and the proposed MPM design.	<b>Notes:</b> difficult stakeholders to make informed comments on any one of these major issues in isolation without understanding the overall impacts.	The review of the MPM strategy has involved two round of public consultation - one by the Taskforce, which led to the Taskforce's confirmation of a number of the strategy components, and the more recent one by EPWA on preferred options for the Unconfirmed Elements. Therefore, this is the final Information Paper containing the final high-level design of the MPM framework.
<b>Collgar</b>	<b>Revenue adequacy:</b> notes further work is continuing on the WEM design and the RCM Review	<b>Recommends:</b> Critical in finalising the RCM and MPM design that EPWA (as planned) undertakes holistic assessment to ensure it provides adequate revenue streams	The adequacy of the investment signals in the WEM are being modelled and considered in the RCM Review.

Submission	Comments/Issue Raised	Requested Changes/Action	EPWA Responses
<b>Adequacy of revenue to support investment</b>			
<b>Synergy</b>	<p><b>Revenue adequacy (ERA review):</b> in light of ERA finding that there is unlikely to be revenue adequacy in the WEM to sustain efficient investment, Synergy is concerned that there is no transparency or assurance that the ERA's Offer Guidelines will enable Market Participants to recover their reasonable costs from the energy markets and the RCM.</p>	<p><b>Recommends:</b> that the MPM framework needs to allow facilities to recover at least their efficient costs and a reasonable return on investment.</p> <p><b>Recommends:</b> under the RCM review - consider what costs should be reasonably covered under the RCM versus energy markets. Upon completion conduct holistic review to ensure MPM regime allows appropriate recovery of reasonable and efficient costs.</p>	<p>The current WEM Rules place conduct obligations on all Market Participants, including obligations to offer at their short run marginal cost (SRMC) if they have market power.</p> <p>The ERA currently has the role of market surveillance, and must investigate any behaviour that reduces the effectiveness of the market or indicates a breach of the WEM Rules.</p> <p>It would form an internal view of who has market power, and then look at the offers of those participants with market power and examine what impact anomalous pricing behaviour has had on the market.</p> <p>This approach largely relies on ex-post investigations, and has led to regulatory uncertainty and delays between the ERA detecting the behaviour and remedies being delivered.</p> <p>EPWA's final design does not fundamentally change the MPM mechanisms currently in place in the WEM. Instead:</p> <ul style="list-style-type: none"> <li>• provides certainty around market power and replaces the uncertainty around SRMC with a better-expressed General Trading Obligation</li> <li>• clarifies the obligations on participants and what conduct is expected of them</li> <li>• provides certainty and clarity on how the components of the MPM framework will be implemented and conducted by the ERA.</li> </ul>

Submission	Comments/Issue Raised	Requested Changes/Action	EPWA Responses
<b>Adequacy of revenue to support investment</b>			
<b>Synergy</b>	<p><b>Efficient investment:</b> in light of ERA report of revenue inadequacy in the WEM to sustain investment - Synergy wants to know how EPWA will take these findings into account in the ERA drafting of the offer guideline and what costs Market Participants should be able to recover from energy markets.</p>	<p><b>Submits:</b> MPM framework and WEM Rules and obligations need to allow facilities to recover at least their efficient costs and a reasonable return on investment. Synergy notes that the issue of revenue adequacy should be further explored as part of the RCM Review and ensure that costs that are not recovered in energy markets can be recovered within the RCM</p>	<p>The proposed amendments to existing arrangements should provide greater confidence to Market Participants of their ability to recover operating costs from energy and FCESS markets.</p> <p>This approach is coupled with an energy price limits framework that provides that price caps are based on the highest cost Facility or Facilities in the SWIS, focused on the operational circumstances that are likely to result in the highest operating costs. This is to allow generators with the highest production costs to recover their variable operating costs for the provision of energy while also allowing Facilities with lower variable costs to recover a portion of their fixed costs.</p>
<b>Alinta Energy</b>	<p><b>ERA report:</b> questions whether the offer construction obligation is fit for purpose in the context of the ERA's findings that the current market arrangements would not provide adequate revenue to justify investment in new storage and intermittent generation projects and that ESS and energy price signals would be further reduced by new entrants.</p> <p>Alinta considers that plans to subsidise 800MW of wind and 2000MWh of storage for Synergy will exacerbate this revenue gap for the private sector.</p>	<p><b>Recommends:</b> in the absence of a new mechanism to meet the revenue gap, an obligation which allows generators to recover their missing money (or LRMC) may be more appropriate.</p> <p><b>Note:</b> Alinta agrees with the ERA that reforms under the RCM review may not meet this gap and that further initiatives may be required.</p>	<p>As acknowledged by the ERA in its report, the RCM Review is likely to result, amongst other things, in an explicit price signal to incentivise investment in flexible capacity, which will provide additional revenue to storage investments and will assist in filling the potential revenue gap the ERA has identified.</p>

Submission	Comments/Issue Raised	Requested Changes/Action	EPWA Responses
<b>General Trading Obligations</b>			
<b>Expert Consumer Panel</b>	<p><b>Offer construction obligation:</b> concerned that use of words "profit maximising offer" could be misinterpreted by Market Participants as validating just the kind of uncompetitive conduct in a concentrated market we are trying to mitigate. Know this is qualified "by a participant without market power", however we think it would be better to use words which convey the outcome we are seeking to achieve.</p> <p>That is - offers which reflect the participants' legitimate right to recover their efficient short run marginal costs and make a reasonable profit, rather than profit-maximise, even with the proposed framework.</p>	<p><b>Recommends:</b> rewording the obligation to say -  <i>"That a Market Participant who has market power offers prices in Submissions (made for STEM, RTM or the FCESS market) that reflect the costs that a Market Participant without market power would include in forming its offer, including a reasonable profit that reflects the interests of consumers."</i></p>	<p>To inform its Directions Report Clarifying Short Run Marginal Cost and Market Offer Requirements in the Wholesale Electricity Market (October 2020), EPWA engaged the Brattle Group to provide advice on these matters. As part of this advice, it was identified that profit-maximising offer would reflect the short run marginal costs of a supplier. EPWA considers that this is a well understood economic concept, and so proposed wording should not present interpretation issues.</p> <p>EPWA considers that the insertion of alternative wording that includes concepts of reasonableness and interests of consumers may be less well understood and risk creating uncertainty.</p>
<b>Collgar</b>	<p><b>Offer construction obligation :</b> supports principle that offers must reflect how a Market Participant without market power would include in forming its profit-maximising offer</p>	<p><b>Recommends</b> - framework should be implemented so Market Participant can recover its efficient operating costs (including mandatory fees and costs to meet regulatory obligations)</p>	<p>The ERA is ultimately responsible for interpreting the General Trading Obligations, and the principles in the WEM Rules upon which the market power test is to be conducted. EPWA considers that the wording of these obligations and assessment principles provides adequate scope for the ERA to account for all relevant operating costs.</p> <p>The ERA must provide guidance on how it intends to consider regulatory allowances or costs into prices in offers in relation to the Offer Construction Obligation and the offer assessment component of the market power test (clause 2.16D.1(a)(i)(3)). The ERA will need to consult on these guidelines and provide reasons for its decisions (clauses 2.16D.3 and 2.16D.4).</p>
<b>Alinta Energy</b>	<p><b>Offer construction obligation:</b> supports reforms to make obligation less prescriptive - noting difficulty of applying SRMC obligations to storage facilities.</p>		<p>Publication of the Offer Construction Guideline will be following public consultation (clause 2.16D.4). It will provide guidance on the issues</p>

Submission	Comments/Issue Raised	Requested Changes/Action	EPWA Responses
<b>General Trading Obligations</b>			
	Without a draft guideline Alinta questions whether this would be appropriate for storage facilities that rely on arbitrage and need to withhold their finite capacity so that it can be discharged during peak price periods to be economic.		raised by Alinta. EPWA acknowledges that storage should be allowed to bid in a way that avoids it being dispatched outside of its Electric Storage Resource Obligation Intervals.
<b>Alinta Energy</b>	<b>Anticompetitive low prices:</b> Ensuring that industries with substantial Government ownership government-owned entities will operate in a commercial manner tends to be a greater concern than market power leading to inefficiently high prices	<b>Recommends:</b> bidding obligation should protect against anti-competitive low prices	<p>The proposed wording of the Offer Construction Obligation, and guidance-based offer assessment determination to be made under Stage 2 of the market power test, would require the ERA to consider whether the prices offered by a Market Participant reflect the prices a Market Participant not holding market power would include in forming its profit-maximising STEM Submission or Real-time Market Submission. This would include consideration of whether a Market Participant is pricing below its reasonable operating costs (i.e. is engaged in predatory pricing).</p> <p>Stage 3 of the market power test (the market impact test) also requires the ERA to consider the quantities scheduled or dispatched as a result of particular pricing (clause 2.16C.8). This should allow the ERA to examine whether, as a result of prices being offered below operating costs, there has been an exclusion of one or more Market Participants from the market.</p>
<b>Synergy</b>	<p><b>Offer construction obligation:</b> generally supports the fact that the obligation appears to now prohibit pricing that is above and below the pricing required.</p> <p>There is no reasonableness or materiality threshold within the pricing obligation. Synergy considers the obligation should acknowledge a degree of imprecision which is inherent in ex-ante pricing by including an element of reasonableness.</p>	<p><b>Recommends:</b> obligation could be drafted to require participants to "offer prices in its Submissions that reflect the costs that a Market Participant without market power <del>would</del> <u>could</u> <u>reasonably</u> include in forming its profit-maximising offer."</p> <p><b>Recommends:</b> include a requirement for relevant pricing behaviour to have resulted in inefficient market outcomes</p>	<p>Prices subject to assessment through the market power test will be subject to the market impact test which is designed to account for the materiality of market impacts (i.e. whether the prices have actually resulted in inefficient market impacts) (see clauses 2.16C.6 and 2.16C.8).</p> <p>This is in addition to the risk rating process under the WEM Rules (clause 2.15.3(d)) which will determine investigation processes (clause 2.13.27). The ERA is also provided with the</p>

Submission	Comments/Issue Raised	Requested Changes/Action	EPWA Responses
<b>General Trading Obligations</b>			
		(in line with effects test) otherwise the regime is inconsistent	discretion to moderate enforcement action based on materiality.
<b>Synergy</b>	<b>Time dimension of Offer Construction Obligation:</b> unclear the extent to which the obligation will be drafted to effectively define market power on the basis of a time dimension of a single trading interval, or at least a very short term, basis.	<b>Recommends:</b> Synergy considers that the obligation should be limited to apply only where the relevant bidding conduct results in “sustained and substantial” inefficient market outcomes	EPWA considers that the principle upon which the market impact test is undertaken - to identify 'inefficient market outcomes' - is sufficient to allow the ERA to identify only outcomes that have had an actual impact on the market (and so would be material).
<b>Synergy</b>	<p><b>Trading conduct obligation:</b> generally supportive - however believes there is overlap between these and the offer construction obligation for some pricing behaviours.</p> <p>For example, offering a price that does not reflect the offer construction obligation is also 'likely to mislead' and/or 'influence' market prices. E.g. behaviour exempt under three-part test but open to enforcement if it is considered a breach of the trading conduct obligations.</p>	<b>Recommends:</b> Synergy considers this potential for overlap should be rectified to ensure it does not leave open the ability for the intended design of the MPM regime to be undermined.	<p>Where offers have been assessed via the market power test and passed either Stage 2, the ERA will not be provided with the ability to commence investigation or enforcement activities for breach of the Offer Construction Obligation in relation to those particular offers. However enforcement of other WEM Rule requirements (i.e. Trading Conduct) is not impacted by the outcome of the market power test.</p> <p>Offers not assessed under the market power test would be subject to standard ERA investigation and enforcement, including for breaches of the Offer Construction Obligation.</p>

Submission	Comments/Issue Raised	Requested Changes/Action	EPWA Responses
<b>Offer Construction Guideline</b>			
<b>Shell Energy</b>	<b>Offer construction guideline:</b> agree that a moderate level of prescription is the most practicable and the requirements will need to be balanced with the guiding principles around certainty, regulatory effort and market efficiency	<p><b>Recommends:</b> for the ERA to consult with stakeholders on the guidelines and ensure that there is sufficient opportunity to provide feedback.</p> <p><b>Notes:</b> Building these controls in to internal systems requires considerable lead time. In order to make these internal decisions, the detail of what is required for compliance by all Market Participants is required from the ERA as soon as possible</p>	<p>The finalisation of the Offer Construction Guideline will be following public consultation (see clauses 2.16D.3 and 2.16D.4).</p> <p>A Market Participant will have 3 months to begin compliance with additional information and internal control requirements (clauses 2.16C.3). Further information on the information requirements will be contained in a WEM Procedure (clause 2.16D.14(b)).</p>
<b>Collgar</b>	<b>Offer construction:</b> supports the ERA having discretion on offer construction and trading conduct within a set of Guiding Principles	<b>Requests:</b> notes it is difficult to endorse without seeing the guidelines - and suggests it is critical that the ERA consult on these guidelines	
<b>Collgar</b>	<b>Governance:</b> notes there is not the same framework as a Market Procedure and that guidelines can be less firm in their wording (in some cases with little requirement for consultation)	<b>Recommends:</b> EPWA to consider how additional governance could support the Offer Construction Guideline to ensure that certainty and consultation opportunities are provided. Consider oversight by the Coordinator (given conflict of interest for ERA to design and regulate the policy)	<p>EPWA does not consider additional oversight by the Coordinator is necessary given its current market monitoring role under clause 2.16.13A of the new WEM Rules.</p> <p>EPWA has amended the MPM framework in response to submissions. Under clauses 2.16D.3 and 2.16D.4 of the Exposure Draft of the WEM Rules, the ERA will be required to invite submission on the making or amending of the Offer Construction Guideline and publish a report containing its reasons for adopting particular wording and its response to submissions.</p> <p>Under clause 2.16D.5 of the Exposure Draft of the WEM Rules Market Participant may seek</p>

Submission	Comments/Issue Raised	Requested Changes/Action	EPWA Responses
<b>Offer Construction Guideline</b>			
			guidance on the Offer Construction Guideline as they relate to the assessment under clause 2.16C.5 of the Exposure Draft.
<b>Australian Energy Council</b>	<b>Offer construction guideline</b> - Considers the approach "prescriptive" and states any guideline will be unable to capture all circumstances and costs that must be recovered in offers (Market Participants may be forced into lower offers thus contributing to revenue sufficiency problem)	<b>Recommendation</b> - should not be prescriptive and as new technologies enter renewable generation types may need to recover their Long Run Marginal Cost given lack of revenue sufficiency outlined by ERA in its effectiveness report	The ERA will be required to consult on Offer Construction Guidelines, designed to provide certainty on what costs can be legitimately recovered in the energy markets (clauses 2.16D.1, 2.16D.3 and 2.16D.4).  As acknowledged by the ERA in its report, the RCM Review is likely to result, amongst other things, in an explicit price signal to incentivise investment in flexible capacity, which will provide additional revenue to storage investments and will assist in filling the potential revenue gap the ERA has identified.
<b>Synergy</b>	<b>Lack of information:</b> little information about how the offer construction obligation will be interpreted or applied by the ERA and it is not proposed to provide any further clarity on this issue in the WEM Rules. These matters are left to be resolved at the ERA's discretion when it releases its Guidelines.	<b>Recommends:</b> undertake a robust and thorough consultation process on the Offer Guidelines and consider including a process for a market participant to challenge the ERA's interpretation on items within the Offer Guidelines prior to the ERA alleging the market participant has not complied with the Offer Guidelines.  <b>Recommends:</b> independent body (e.g. Coordinator) approving the guidelines to ensure consultation/changes are carefully considered in context of the WEM.	The ERA must provide guidance on how it intends to treat the matters listed under clause 2.16D.1(a) when assessing relevant offers.  EPWA does not consider additional oversight by the Coordinator is necessary given its current market monitoring role under clause 2.16.13A of the new WEM Rules.  EPWA notes that under clauses 2.16D.3 and 2.16D.4 of the Exposure Draft of the WEM Rules, the ERA will be required to invite submissions on the making or amending of the Offer Construction Guidelines and publish a report containing its reasons for adopting particular wording and its response to submissions.

Submission	Comments/Issue Raised	Requested Changes/Action	EPWA Responses
<b>Offer Construction Guideline</b>			
			<p>Under clause 2.16D.5 of the Exposure Draft of the WEM Rules Market Participants may seek guidance on the Offer Construction Guideline as they relate to the assessment under clause 2.16C.5 of the Exposure Draft.</p> <p>EPWA notes that there are review opportunities (to the Energy Review Board (ERB)) available to Market Participants seeking to challenge any ERA determinations that lead to enforcement actions.</p>
<b>Perth Energy</b>	<p><b>Offer construction for storage facilities:</b> we want these to charge up when there is excess electricity in the system, which will be when prices are low and possibly negative, and discharge when capacity is tight.</p>	<p><b>Requests:</b> more information on how offers are to be made by storage systems.</p>	<p>The ERA will have final discretion as to how it treats charging and generating opportunity costs in its enforcement of the Offer Construction Obligation, and the determination to be made under the offer assessment stage of the market power test.</p> <p>The ERA will be required to provide guidance in the Offer Construction Guideline on how it intends to treat variable costs of production, including charging and generating opportunity costs. This should provide clarity on the ERA's expectations as to how these costs are incorporated into offers.</p> <p>EPWA acknowledges that storage should be allowed to bid in a way that avoids it being dispatched outside of its Electric Storage Resource Obligation Intervals.</p>

Submission	Comments/Issue Raised	Requested Changes/Action	EPWA Responses
<b>Market Power Test</b>			
<b>Expert Consumer Panel</b>	<p><b>Three-part market power test:</b> is systematic and transparent - drawing on tested international models and should provide consumers and market participants with greater clarity and confidence in the WEM.</p> <p>The history of these kinds of actions highlights the challenges regulators face because of information and resourcing asymmetries between them and Market Participants</p>	<p><b>Notes:</b> major concern is the ERA is not adequately resourced to administer the new framework, and that the penalties for misconduct are not an effective deterrent.</p>	<p>The ERA already administers this framework. If the ERA considers that it is not adequately resourced for this, there are avenues for the ERA to apply for an increase to its budget.</p>
	<p><b>Public reporting and disclosure:</b> the scheme should be designed to maximise transparency at each stage to ensure there are strong reputational and financial incentives against misconduct.</p>	<p><b>Recommends:</b> Disclosure of commencement of investigations - not just outcomes of a completed process - is necessary to ensure the scheme has teeth. Recommends undertaking a review of the effectiveness of MPM framework (akin to small use customer code).</p> <p><b>Suggests:</b> consider introducing scheme for independent audits to detect non-compliance and provide transparency of outcomes</p>	<p>EPWA notes the ECP's request for independent audits and comments around reviews. EPWA is expanding the Coordinator's review functions to include assessment of components of the MPM framework. The request for greater transparency relates to the investigation and enforcement framework more generally. As part of a package of reforms to the compliance and monitoring framework, EPWA will be proposing to amend the WEM Rules to require the commencement of investigations to be published (as well as the outcomes). This will be subject to confidentiality parameters and the rules will be released for stakeholder comment.</p>

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<b>Gateway Test</b>			
<b>Shell Energy</b>	<b>Gateway Test:</b> recognises need for a test but considers that a CR method based on MWh would provide superior measure due to relevance of market conditions		Assessing Facilities based on MWh requires the use of a dynamic concentration ratio if current market conditions are to be taken into account. While EPWA acknowledges the advantages for some larger markets of a dynamic concentration ratio, EPWA does not consider that the extra costs that are likely to be incurred to facilitate this level of testing is warranted in the WEM as it does not result in a substantially different outcome to a static concentration ratio the majority of the time.  Further, if the static concentration ratio does not pick up instances of market power in real-time, the ERA will still have ability to assess the behaviour of Market Participants against the General Trading Obligations.
<b>Shell Energy</b>	<b>Static CR:</b> recognises the static CR provides a simple and stable methodology, reducing uncertainty for participants - supports it being set at 10% generation capacity market share		Noted.
<b>Perth Energy</b>	<b>Gateway Test:</b> supports approach and the 10% CR proposed - noted that “passing” the gateway test does not exempt smaller players from being investigated for market power issues.		Noted.
<b>Australian Energy Council</b>	<b>Static CR Gateway Test has two problems:</b> 1. May fail to capture portfolios that have less than 10% of market share but can still influence prices due to their generation technology (while larger portfolios captured but may not be exercising market power) 2. Could capture large portfolios that have little	<b>Request:</b> the AEC encourages EPWA to give further consideration to the Gateway Test and how these scenarios will be addressed.	Where a static concentration ratio does not pick up instances of market power in real-time, the ERA will still have the ability to assess the behaviour of Market Participants against the General Trading Obligations. While all Market Participants that are captured by the 10% threshold are considered to hold market power for

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<b>Gateway Test</b>			
	influence on prices - e.g. large wind and solar that exceed 10% of market share but cannot meaningfully adjust prices		the purposes of the market power test, and will come under further scrutiny through Stage 2 of the market power test, there is no assumption that there has been an abuse of market power.
<b>Collgar</b>	<b>Gateway Test:</b> notes in theory the test should not be required given the general trading obligations. Agrees the approach is sensible to minimise costs and regulatory burden on MP, and supports this option if the ERA considers it the most cost-effective approach.		Only applying the General Trading Obligations to all Market Participants without a gateway test would mean that the MPM regime remained entirely ex-post, which would not provide the ex-ante certainty required for those Market Participants that are to be the focus of ERA attention due to their ability to influence market outcomes.
<b>Collgar</b>	<b>Portfolio Level:</b> supports portfolio approach given potential to coordinate bids for facilities under single ownership	<b>Recommends:</b> definition of portfolio ought to capture facilities (including aggregated DER) under the control of a single entity, but not necessarily ownership. This accounts for the various corporate structures (joint ventures and VPPs)	Noted.
<b>Collgar</b>	<b>Static CR:</b> thinks pivotal supplier is would be best indicator but supports the more cost effective recommended approach. Notes that this may include large facilities (renewables) that do not have market power due to technical capacity/location	<b>Note:</b> ensure these factors are considered in selection and design of gateway test	EPWA considered, and undertook analysis on: a single, 2 and 3-pivotal supplier tests (PST) and did not find that any provided the right balance for the WEM against the Guiding Principles. The dynamic nature of any PST also leads to extra administrative burden and cost for the ERA and, ultimately, energy consumers.  Under the proposed arrangements, all Market Participants that are captured by the 10% static threshold are considered to hold market power for the purposes of the market power test, and will come under further scrutiny through Stage 2 of

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<b>Gateway Test</b>			
			the market power test, but there is no assumption that there has been an abuse of market power.
<b>Collgar</b>	<b>Timeframe:</b> where MP newly caught in gateway test - longer than 3 months may be needed to enable it to amend its systems and processes to meet record-keeping requirements	<b>Recommends:</b> window of up to six months as agreed between the ERA and Market Participant depending on size and available resourcing	EPWA expects that portfolio participants will have robust internal governance arrangements already, as conduct and bidding obligations already exist in the WEM Rules and, in any event, participants who expect to be flagged by the gateway test should not wait until the gateway test has identified them as having market power to implement such robust arrangements.
<b>Alinta Energy</b>	<p><b>Gateway Test:</b> supports the general intent but does not support the test. Considers it unnecessary and states that it may cause unintended consequences, noting that:</p> <ol style="list-style-type: none"> <li>1. If additional obligations removed - the test would only serve to focus the ERAs investigations (on the larger players). This may be duplicative given the effects test will be the best indicator of whether investigation should be considered.</li> <li>2. It may be misleading given using CRs risks overlooking smaller Market Participants with marginal capacity that are able to materially influence price outcomes especially as renewables increase (despite not meeting the arbitrary threshold)</li> </ol>	<b>Recommends:</b> if no additional obligations are triggered by the gateway test (as suggested below), Alinta recommends it should be removed from the design.	<p>The main purpose of the gateway test is to provide both the ERA and the relevant Market Participant/s with ex-ante notice that market power exists and the ERA will be focussing its attention on those Market Participants.</p> <p>Only applying the General Trading Obligations to all Market Participants without a gateway test would mean that the MPM regime remained entirely ex-post and, while it may be an improvement on current arrangements, it would not provide the ex-ante certainty required for those Market Participants that are to be the focus of ERA attention due to their ability to influence market outcomes.</p> <p>While all Market Participants that are captured by the 10% threshold are considered to hold market power, and will come under further scrutiny through Stages 2 and 3 of the market power test, there is no assumption that there has been an abuse of market power. These later stages of the</p>

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<b>Gateway Test</b>			
			market power test will be used by the ERA to make an assessment of potential market power abuse requiring further investigation.
	<p><b>Additional information and internal controls:</b> does not support additional obligations for Market Participants captured by the gateway test for the following reasons:</p> <ol style="list-style-type: none"> <li>1. Paper doesn't state what obligations there will be (what problems they will solve or benefits they would provide)</li> <li>2. This will likely be duplicative - i.e. clause 2.13.23 already requires MP to notify the ERA of any suspected breaches (and clause 7.4.26)</li> <li>3. Doesn't consider the existing record keeping requirements could be strengthened and doesn't see what benefits could be added</li> <li>4. Any further obligations providing reasons for resubmissions and record keeping would multiply already significant compliance burden (clause 7.4.1 requires compliance submissions)</li> </ol>	<p><b>Notes:</b> Specifying "internal arrangements" for how participants should maintain these records and self-monitor may prevent participants from devising their own fit for purpose solutions and continuously improving them.</p> <p><b>Recommends:</b> removing all of the proposed additional obligations</p>	<p>Any additional obligations required to put in place by Market Participants that fail the gateway test will be outlined in the WEM Rules and detailed in a Procedure to be issued by the ERA after stakeholder consultation. These obligations are intended to supplement, rather than duplicate, existing obligations.</p> <p>Taking stakeholder comments into account EPWA has refined the drafting of the relevant rules do not dictate any of the "internal arrangements".</p>
<b>Synergy</b>	<p><b>Market power test:</b> broadly supportive of the use of the proposed three stage, non-binding market power test to identify the potential misuse of market power by larger market participants in the proposed MPM regime.</p> <p><b>Concentration Ratio:</b> supports the proposed introduction of the Static CR for the gateway test.</p>		Noted.
<b>Synergy</b>	<p><b>Constrained gateway test:</b> agrees with proposal for alternative test for binding constraints. Disagrees with decision not to apply the three-stage market power test to FCESS markets. Does not agree that</p>		Applying the three-stage market power test to FCESS markets would be duplicative considering the decision has already been made to implement the SESSM through a previous WEM Reform

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<b>Gateway Test</b>			
	<p>the SESSM is the appropriate primary measure for MPM in FCESS markets as:</p> <ol style="list-style-type: none"> <li>1. it is an ex-post solution (rather than ex-ante)</li> <li>2. FCESS significantly more concentrated and at risk of Market Participant abuse - three stage test would increase incentive to be compliant with obligations</li> </ol>		<p>work stream. The SESSM requires AEMO and the ERA to take a forward view of the efficiency of the FCESS markets and attempt to mitigate future market inefficiencies.</p> <p>Further, the General Trading Obligations will still apply to FCESS markets and the ERA will have the power to assess Market Participants against these. EPWA considers that a single MPM mechanism for FCESS, rather than two running concurrently, is a more efficient outcome.</p>

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<b>Offer Assessment</b>			
<b>Perth Energy</b>	<b>Guidance-based assessment:</b> supports approach as it provides flexibility for both the ERA and Market Participants. Providing specific price ranges would be very difficult because gas prices, which are the dominant operating cost for many players, vary significantly over time.	Also supports approach regarding pre-approval.	Noted.
<b>Shell Energy</b>	<b>Guidance Based Assessment:</b> supportive of approach which will enable Market Participants to consult with the ERA and will more flexibility when applying assessment requirements.	<b>Notes:</b> comfortable as long as the framework is reflective of costs and Market Participants are made whole with recovery of actual costs	<p>Clauses 2.16D.3 and 2.16D.4 of the Exposure Draft of the WEM Rules require the ERA to invite submission on the making or amending of the Offer Construction Guideline and publish a report containing its reasons for adopting particular wording and response to submissions.</p> <p>Under clause 2.16D.5 of the Exposure Draft of the WEM Rules Market Participant may seek guidance on the Offer Construction Guideline as they relate to the assessment under clause 2.16C.5 of the Exposure Draft.</p>
<b>Shell Energy</b>	<b>Consultation framework:</b> supports this approach as it minimises administrative and regulatory burden on the ERA - welcome EPWA's approach to structure the consultation framework to limit the ERA's obligation to give guidance on offer parameters		Noted.
<b>Collgar</b>	<b>Individual assessment:</b> questions whether approach to separately assess offers in real-time markets is appropriate. Given co-optimised ESS and energy dispatch, it is necessary to consider bidding behaviour across all markets to determine whether market power is being used. Example - Market Participants could provide	<b>Recommends:</b> Collgar encourages the ERA to consider behaviour across all markets, including contractual mechanisms, when assessing offer construction.	EPWA considers that the market monitoring activities, to be carried out by the ERA under the SESSM arrangements and general compliance and market monitoring (clauses 2.13.1 and 2.16.11), will be sufficient to ensure that market power in FCESS markets is mitigated while

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<b>Offer Assessment</b>			
	<p>appropriate offers into the energy market but offer some capacity at low prices in ESS markets (above price floor but potentially below cost) so it is dispatched for ESS and another, higher priced facility is dispatched for energy, increasing the energy market clearing price</p>		<p>reducing unnecessary duplication of regulatory effort and cost.</p> <p>EPWA also notes that the Coordinator must also monitor and report on design problems or inefficiencies in the market (clauses 2.16.13A, 2.16.13E).</p> <p>General Trading Obligations will still apply to FCESS markets and the ERA will have the ability to assess Market Participants against these.</p>
<b>Synergy</b>	<p><b>Offer Construction Obligation:</b> supports replacement of SRMC with the offer construction as it appears to provide more realistic standards. Notes the risk that the ERA will apply theoretical economic approach to determine pricing standards.</p>	<p><b>Recommends:</b> providing more information about how the obligation will be interpreted or applied by the ERA. There should be clear guidance in the WEM Rules. Urges for robust consultation on ERA Guidelines and allow for independent review by the Coordinator.</p>	<p>EPWA's view is that a balanced approach should be adopted regarding the level of prescription provided to the ERA in the WEM Rules. Consistent with this approach, EPWA considers that the ERA should have some discretion in interpreting the principles within the General Trading Obligation to avoid the risk that a high level of prescription may result in outcomes that are contrary to the objectives of the MPM framework.</p> <p>EPWA notes that under clauses 2.16D.3 and 2.16D.4 of the Exposure Draft of the WEM Rules, the ERA will be required to invite submissions on the making or amending of the Offer Construction Guideline and publish a report containing its reasons for adopting particular wording and response to submissions.</p> <p>Under clause 2.16D.5 of the Exposure Draft of the WEM Rules Market Participant may seek guidance on the Offer Construction Guideline as</p>

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<b>Offer Assessment</b>			
			they relate to the assessment under clause 2.16C.5 of the Exposure Draft.
<b>Synergy</b>	<b>Pricing:</b> unclear whether obligations will result in inefficient market outcomes and a "missing money" problem for gas fuelled facilities (associated with costs of entering long term, firm fuel contracts required under the RCM).	<p><b>Recommends:</b> allowing a MP to recover its costs during 'ramping' in the trading intervals before and after a facility clears for the provision of energy and FCESS.</p> <p>Expressly permit pricing to avoid shut down and start-up costs and consider this requirement for FCESS markets to ensure facilities can ride through low price periods</p>	<p>EPWA has considered stakeholder feedback relating to cost recovery in the market, and concerns that opportunity costs associated with particular activities may not captured.</p> <p>In response, EPWA proposes that the WEM Rules will provide that the Offer Construction Guideline must include how the ERA intends to treat: fuel or charging costs as well as other opportunity costs.</p> <p>EPWA notes that, under clauses 2.16D.3 and 2.16D.4 of the Exposure Draft of the WEM Rules, the ERA will be required to invite submissions on the making or amending of the Offer Construction Guideline and publish a report containing its reasons for adopting particular wording and its response to submissions.</p> <p>Under clause 2.16D.5 of the Exposure Draft of the WEM Rules Market Participant may seek guidance on the Offer Construction Guideline as they relate to the offer assessment under clause 2.16C.5 of the Exposure Draft.</p>

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<b>Market Impact Test</b>			
<b>Collgar</b>	<p><b>Impact Test:</b> if MP can demonstrate that there was not deliberate or negligent behaviour that led to the offer assessment 'fail' then the ERA ought to be able to use its discretion as to whether a breach has occurred. That is not to say that intent must be proven for a breach to occur, but rather that a demonstrated lack of intent ought to a consideration for the ERA's decision making.</p>	<p><b>Recommends:</b> the Market Impact Test ought to also consider the behaviour of the Market Participant.</p>	<p>The Offer Construction Obligation, as currently formulated, does not involve intent. EPWA considers it would be problematic to require the ERA to consider the intent of a Market Participant in making its determination of 'inefficient market outcomes'.</p> <p>EPWA notes that the ERA must develop a risk rating process under the WEM Rules (clause 2.15.3(d)) which will determine investigation processes (clauses 2.13.27). The ERA is also provided with the discretion to moderate its enforcement action based on materiality.</p> <p>Before the ERA may issue a civil penalty or make an order, under clause 2.13.42 it must have regard to all relevant matters, including the nature and extent of the breach and any loss suffered, the circumstances in which the breach took place and whether the Rule Participant has self-reported or taken mitigating actions.</p>
<b>Synergy</b>	<p><b>No clarification of impact test:</b> The test does not direct the ERA's enforcement activity to situations where a market participant's activities result in "sustained and substantial hindrance" to competitive market outcomes.</p> <p>No materiality threshold to prevent the ERA from prosecuting isolated instances of market power in a single trading interval or which result in minor market impacts. No requirement that the ERA consider a 'real world' counterfactual when assessing market impact, taking into account the</p>	<p><b>Recommends:</b> consider including in the WEM Rules a materiality threshold for breach of the offer construction obligation and a requirement for the ERA to take into account what would occur in a workably competitive market in deciding whether a breach has occurred.</p> <p><b>Recommends:</b> extending materiality threshold to offer construction obligation as well otherwise ERA can impose orders for a minor breach.</p>	<p>EPWA considers that the principle upon which the market impact test is undertaken - to identify 'inefficient market outcomes' - is sufficient to allow the ERA to identify only outcomes that have had a material impact on the market.</p> <p>EPWA notes that the ERA must develop a risk rating process under the WEM Rules (clause 2.15.3(d)) which will determine investigation processes (clauses 2.13.27). The ERA is also provided with the discretion to moderate enforcement action based on materiality, and</p>

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<b>Market Impact Test</b>			
	likely conduct of other market participants in response to the relevant bidding behaviour	<b>Recommends:</b> applying impact test flexibly to enable MP to account for risks in ex-ante market offers	must have regard to all relevant matters, including the nature and extent of the breach and any loss suffered, the circumstances in which the breach took place and the impact on the market and power system.

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<b>Energy and FCESS Price Limits</b>			
<b>Collgar</b>	<p><b>General:</b> in theory the market power test would negate the need for price caps - however Collgar notes that are retained as a backstop to ensure price exposure limited.</p> <p>Supports price caps that are sufficiently high to not bind frequently and impede on revenue adequacy (including that they allow for recovery of ramping costs). Collgar also supports less frequent, three-year review (with annual indexation) to mitigate unnecessary review costs.</p>		Noted
<b>Shell Energy</b>	<p><b>Energy price cap:</b> agrees with single cost-based energy price cap and notes that it is difficult to find reason to allow an energy price cap above the highest cost generator in the system.</p>		Noted
<b>Perth Energy</b>	<p><b>Energy price cap:</b> This is the one area that we have some concern. We would not want to see prices running up to the new, higher cap on a regular basis though, presumably, the ERA would investigate if this were to occur.</p>	<p><b>Question for EPWA:</b> does it provide a perverse incentive to retain some diesel-based generation in the market so that the cap is held high?</p>	<p>EPWA notes that price caps are a backstop and not a primary measure to mitigate market power.</p> <p>Sustained or repeated high pricing would be expected to be caught by the market power test and investigated. This should neutralise any incentive to retain diesel-based generation purely to prop up price caps.</p>
<b>Synergy</b>	<p><b>Price Caps:</b> supports proposal for single cap for STEM and RTM - and \$0 floor in FCESS markets.</p>		Noted
<b>Synergy</b>	<p><b>Energy price floor:</b> for the STEM and RTM is currently too low and is resulting in economically inefficient outcomes. Continued excessively low Minimum STEM Price will result in increasing costs in the FCESS markets as facilities will need to</p>		<p>EPWA notes the outcomes of recent ERA reviews of the Minimum STEM Price, and the NEM Reliability Standard and Settings Review, which have recommended retention of a -\$1,000/MWh price floor.</p>

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<b>Energy and FCESS Price Limits</b>			
	recover their enablement losses of the Minimum STEM Price in the FCESS market. This issue will be exacerbated as FCESS requirements will intensify in the future.		EPWA considers that energy opportunity costs should be priced in FCESS markets, given that it is the requirement to provide FCESS that causes these opportunity costs to emerge.
<b>Perth Energy</b>	<b>FCESS price cap:</b> The preferred option appears to give appropriate protection to electricity customers while still providing adequate revenue recovery for Market Participants.		Noted
<b>Australian Energy Council</b>	<b>FCESS price cap:</b> AEC has concerns that -  1. Generators will be forced to incur a loss in some circumstances during ramp up/ramp down periods and the extent of these losses may be larger than acknowledged in the Consultation Paper. This is because the energy price for the ramp up/ramp down intervals could be low, or even negative, and outweigh the revenue from the FCESS 2. Generators may not be able to fully recover their ride through costs in circumstances where it would be more efficient for a facility to ride through and recover losses rather than incurring the shut down and start-up costs	<b>Requests:</b> further information about whether a generator can decline to offer into the market and how they can recover their full ride through costs.	As noted in the August 2022 Consultation Paper, EPWA considers that any losses during ramping should be able to be recovered through offer prices, as a start-up cost, noting that the energy and FCESS price caps will also include a margin and be rounded up.  The design does not allow for full recovery of ride-through costs. The onus is on the Market Participant to decide whether it is in its commercial best interest to ride through or to cycle its generator.
<b>Collgar</b>	<b>FCESS price cap:</b> a sufficiently high caps negates the need for separate caps for each ESS. If a lower cap is implemented than there may be value in having separate caps for each ESS.		Noting that price caps are merely a backstop and the intent to set them at sufficiently high level, EPWA is satisfied that a single price cap applicable to all FCESS can provide a balance between administrative and market efficiency, and protection for consumers.
<b>Alinta Energy</b>	<b>FCESS Price Cap:</b> Option 1 (cap which excludes enablement) may not provide appropriate price signals because:	<b>Recommends:</b> permit participants to price their enablement losses, noting that preventing this may further	As explained in the August 2022 Consultation Paper, EPWA considers that Option 1 allows for full recovery of the marginal costs of providing

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	<ol style="list-style-type: none"> <li>enablement losses may be significant in highly renewable grid (prolonged or frequent negative price periods) which may deter investment in ESS projects</li> <li>may perceive disadvantage to providing ESS when they must offer at the cap when this does not cover opportunity cost of energy (e.g. during high energy price periods). ESS may be dispatched so they can be enabled, and receive less revenue compared energy-only participants. These situations may also cause tiebreaks to occur at the cap.</li> </ol>	diminish the already inadequate signals to invest in storage and add significant complexity in exchange for potentially mitigating a risk that is likely to be disproportionately low.	<p>FCESS, including opportunity costs, while maximising protection of consumers against extraction of abnormal profits. Option 1 avoids the need to set a price cap that may be orders of magnitude greater under the other options considered. Option 1 also avoids double-payment of start-up costs and Enablement Losses.</p> <p>EPWA agrees that the magnitude of FCESS Uplift Payments is an important consideration for new investors, and has included obligations for AEMO to publish details on these payments under clause 9.10.27M.</p>
<b>Alinta Energy</b>	<p><b>FCESS price cap:</b> complicated by Option 1 because:</p> <ol style="list-style-type: none"> <li>MP would need to build 2 pricing models (one that prices enablement losses and one that excludes them)</li> <li>MP would need to reconcile, validate, and pass through additional unfamiliar costs with complex calculations.</li> </ol>	<b>Recommends:</b> adopting Option 2 which Alinta considers would avoid these potential price signal and complexity issues.	EPWA acknowledges the complexity introduced by the proposed approach. However, EPWA considers that this complexity is warranted due to the lower cost and adequate protection for consumers, and reduced reliance on the ERA to monitor and investigate FCESS offers.
<b>Alinta Energy</b>	<p><b>FCESS price cap:</b> considers risk of higher prices is small compared to the complexity/price signal issues considering that:</p> <ol style="list-style-type: none"> <li>Reduced gate closure should reduce the risk of participants over-forecasting their enablement losses.</li> <li>ESS markets have limited requirements, increasing the pressure for participants to competitively price any potential enablement losses</li> </ol>		<p>EPWA agrees that the SESSM would be expected to identify excessive pricing.</p> <p>However, given the order(s) of magnitude difference between price caps under Options 1 &amp; 2, EPWA considers that the ex-post nature of the SESSM (while appropriate in other areas) does not sufficient protection on its own.</p>

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<b>Energy and FCESS Price Limits</b>			
	<p>and potential costs.</p> <p>3. If EPWA decides to retain the SESSM, there are already onerous consequences and controls</p> <p>4. As highlighted by ERA’s effectiveness review, the greater risk forecast is that ESS prices will be too low to sustain investment. Subsidising Synergy to invest in ~2000MWh of storage may exacerbate this issue.</p>		<p>EPWA disagrees that Option 1 would suppress prices below efficient levels, noting that the clearing price will be allowed to exceed the FCESS Offer Price Ceiling to compensate opportunity costs where these are calculated and compensated by WEM Dispatch Engine.</p>
<b>AEMO</b>	<p><b>FCESS price cap:</b> depending on approach for enablement uplift - a MP may use market power in FCESS markets to generate abnormal returns (and excessive uplift payments). This may disrupt bidding and dispatch.</p>	<p><b>Requests:</b> AEMO needs to understand the implementation issues that may arise with providing additional data/analysis to enable the ERA to monitor market power within FCESS markets</p>	<p>EPWA acknowledges that a participant may be able to manipulate the size of FCESS Uplift Payment by varying its energy offer prices. However, EPWA expects that this behaviour would be identified through the broader MPM framework.</p>
<b>AEMO</b>	<p><b>FCESS Uplift payments:</b> may vary overall incentives for MP to structure Facilities offers for energy and FCESS. Ex-post adjustment is not considered by the WEMDE objective function and any ex-post enablement losses would indicate that the actual dispatch was inefficient to WEMDE (thus having broader WEM impact).</p> <p><b>On-application compensation payment:</b> presents other implementation challenges</p>	<p><b>Clarification:</b> the design to implement an FCESS uplift payment as an “automated uplift payment” would require new WEM Rules to enable settlement.</p>	<p>Case studies developed by EPWA indicate that a participant would lose money if it sought to manipulate its offers to be dispatched for the sole purpose of receiving the FCESS Uplift Payment.</p> <p>The effect of the FCESS Uplift Payment is to top up the revenue of the relevant Market Participant to be pay-as-bid, in recognition that its facility was required for system security purposes. EPWA understands that the calculation of costs within the WEM Dispatch Engine objective function is based on bid costs (not clearing prices), so EPWA expects that the dispatch solution should account for this total cost, and that dispatch efficiency should be unaffected.</p>

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<b>Energy and FCESS Price Limits</b>			
			New rules have been drafted to give effect to the FCESS Uplift Payment, and discussions held with AEMO on rules and implementation.
<b>Australian Energy Council</b>	<b>Review period:</b> the rapid energy transition means there may be merit in reducing the review period to two years to ensure that the limits continue to align with market conditions.	<b>Recommends:</b> a prescribed process for MP to request in-cycle review and determination that should: <b>1.</b> Outline the circumstances for an in-cycle review so participants to provide clarity and avoid ERA conducting regular and unnecessary reviews <b>2.</b> Include an independent body (Coordinator) so that requests for a review are thoroughly considered, not rejected without merit and any rejection can be challenged	A process for a Market Participant to request a review of a price limit to be brought forward has been included in section 2.26 of the rule amendments, including information that the Market Participant must provide as part of such a request.  Following consideration of a request, the ERA will be required to publish its response, which will outline its considerations of the alignment between the current Market Price Limits and the applicable principles, and the administrative efficiency of conducting an in-cycle review.
<b>Synergy</b>	<b>Price cap review:</b> disagrees with proposal to review every three years. For example planned retirement of Muja D and Collie within two years of each other.	<b>Recommends:</b> reviewing caps and floor every two years	With these processes in the rules, EPWA considers that a 3-yearly review cycle, with the ability to bring forward reviews where this is considered necessary, provides an appropriate balance between market and administrative efficiency.
<b>Australian Energy Council</b>	<b>Price Limit Indexation:</b> Quarterly average gas prices jumped by over 200% in the east coast markets between Q1 2022 and Q2 2022, pushing gas prices to record levels and contributing to the spike in wholesale electricity prices. This period shows how fast the market can change and the impact fuel prices have on wholesale electricity pricing.	<b>Recommends:</b> rather than the ERA having 'discretion' to index price caps to fuel prices, the WEM Rules should make clear that the ERA is required to index price caps to fuel prices.	While the form and basis of price escalation is likely to be dependent on the specific fuel type, the rule amendments have removed any

Submission	Comments/Issue Raised	Requested Changes/Action	EPWA Responses
<b>Energy and FCESS Price Limits</b>			
<b>Synergy</b>	<b>Indexation:</b> As has occurred in the eastern states, fuel prices can materially change within a short period and will become increasingly significant during the transition away from coal generation.	<b>Recommends:</b> WEM Rules should require indexation of the price caps to be undertaken in-cycle for inflation and fuel prices rather than this being something that could potentially be included in the WEM Rules	reference to specific fuel types and provided the ERA with discretion to consider the appropriate technology upon which to base the price caps.  EPWA considers that it is appropriate to allow the ERA discretion to determine the escalation process and schedule that should apply, having regard to the technology/ies upon which the calculations of the price caps are based.  Any ERA decisions related to the setting of the price limits will be Reviewable Decisions.
<b>Collgar</b>	<b>Future price floor assessments:</b> will become more complex as new technologies, including storage, enter the market. For example, the energy price floor is the cap on the price paid to storage to charge	<b>Recommends:</b> review of the considerations set out in clause 6.20.14 of the WEM Rules may be necessary to ensure they are fit-for-purpose for the new WEM.	EPWA has reviewed the current rules related to the Minimum STEM Price review, which are being substantially relocated to section 2.26, and has made some amendments to the drafting so that it is fit-for-purpose for the new WEM.
<b>Collgar</b>	<b>In-period Review:</b> ERA and/or Market Participants being able to trigger an in-period review is very valuable to manage unexpected cost increases (as is currently being experienced).	<b>Recommends:</b> prescribing process for a review by the Coordinator if a Market Participant request is declined (to ensure reasonable requests are not rejected).	EPWA notes that any ERA decisions related to the setting of the price limits will be Reviewable Decisions.

Submission	Comments/Issue Raised	Requested Changes/Action	EPWA Responses
<b>Governance of the framework, including role of ERA</b>			
<b>Australian Energy Council</b>	<b>ERA Conflict of interest</b> - ERA required to develop guideline, assess performance and administer civil penalties	<b>Recommends:</b> extensive consultation on proposed guidelines via independent body to ensure views not aligned with the ERA are fairly considered	Clauses 2.16D.3 and 2.16D.4 of the Exposure Draft of the WEM Rules require the ERA to invite submission on the making or amending of the Offer Construction Guideline and publish a report containing its reasons for adopting particular wording and its response to submissions.
<b>Collgar</b>	<b>Governance:</b> notes that guidelines do not have the same framework as a Market Procedure and can be less firm in their wording (in some cases with little requirement for consultation)	<b>Recommends:</b> EPWA to consider how additional governance could support the Offer Construction Guideline to ensure that certainty and consultation opportunities are provided. Consider oversight by the Coordinator (given conflict of interest for ERA to design and regulate the policy)	Under clause 2.16D.5 of the Exposure Draft of the WEM Rules Market Participant may seek guidance on the Offer Construction Guideline as they relate to the assessment under clause 2.16C.5 of the Exposure Draft.  EPWA does not consider additional oversight by the Coordinator is necessary given its current monitoring duties under clause 2.16.13A of the new WEM Rules.
<b>Expert Consumer Panel</b>	<b>Civil Penalty amounts:</b> concerned that the financial penalties for misconduct are not commensurate with the consumer impact of the exercise of market power in the WEM, nor to act as a strong deterrent for this behaviour. E.g. Vinalco only fined \$2,500 for breach of SRMC rules. Penalties do not appear adequate for Market Participants with revenues in the billions.	<b>Recommends:</b> The ECP's strong view therefore is that the development of the MPM arrangements should be supported by a review of the civil penalty regime to ensure it is fit-for-purpose. The NEM has recently increased civil penalty provisions with the top tier increased to \$10 million.	EPWA notes the ECP's request for a civil penalty review and concerns about the size of the financial penalties for misconduct in the WEM. The maximum amount for civil penalties is actually established under the Electricity Industry Act and is capped at \$100,000 for a contravention of a civil penalty, and in addition a daily amount not exceeding \$20,000. While there are not likely to be immediate changes to the legislation, EPWA recently released a consultation paper which provided for some changes to the three civil penalties categories, and will allow the ERA more discretion to consider the nature of the breach and apply up to the caps in certain circumstances. The

Submission	Comments/Issue Raised	Requested Changes/Action	EPWA Responses
<b>Governance of the framework, including role of ERA</b>			
			<p>corresponding amending regulations and rules will be released for comment.</p>
<b>Synergy</b>	<p><b>Civil Penalties:</b> substantial power and discretion for the ERA to determine what conduct constitutes a misuse of market power. Concerning given the concurrent changes being proposed to the enforcement regime under which the ERA will not only have power to investigate non-compliance with the WEM Rules but will also be able to impose penalties and ‘orders’ (including for serious Category C offences) on Market Participants it considers non-compliant with its own guidelines.</p>	<p><b>Recommends:</b> reconsider giving the ERA authority to issue Category C breach and penalty notices</p>	<p>The changes to the ERA’s enforcement actions are not a new proposal, EPWA is simply putting into effect decisions previously implemented by the Taskforce. The Taskforce in its 2020 Monitoring and Compliance Information Paper outlined the ERA’s enforcement powers in the new market, which were to include making new orders, and issuing Category A, B and C civil penalties. Corresponding WEM Rules were drafted, consulted on and approved by the Minister before the Taskforce was concluded. Please refer to section 2.13 of the WEM Rules scheduled to commence at the start of new market.</p> <p>EPWA would like to note that the ERA is the independent regulator, and like most regulators (including the Australian Energy Regulator and Ofgem) has both compliance and enforcement responsibilities. Under the current WEM Regulations the ERA already has enforcement powers, and can demand payment for Category A civil penalties.</p> <p>EPWA also notes that the ERA will not be applying a penalty based on offers that are non-compliant with its guidance alone – the behaviour must also have resulted in inefficient market outcomes. In the case of a breach, the ERA may then consider the full range of enforcement actions available under clause 2.13.36. Before</p>

Submission	Comments/Issue Raised	Requested Changes/Action	EPWA Responses
<b>Governance of the framework, including role of ERA</b>			
			<p>the ERA may issue a civil penalty or make an order, under clause 2.13.42, it must have regard to the all relevant matters, including the nature and extent of the breach, any loss suffered and the circumstances in which the breach took place.</p>
<b>Synergy</b>	<p><b>Reversal of onus of proof before ERB:</b> regime preserves merits review - however this only occurs after the ERA has already decided a breach has occurred and has made orders/penalties.</p> <p>Any review before the ERB is of the ERA's decision so the onus will be on the Market Participant to show why the ERA was wrong (rather than on the ERA to establish a breach as is the current position). Given that the ERA has access to all relevant market information, it is unreasonable to require the market participant to carry the burden of proving that it has not breached the WEM Rules.</p>	<p><b>Recommends:</b> any ERB review should be a de novo review on the merits, as if no ERA decision had been made. This would effectively return the burden of proving breach to the ERA</p>	<p>No changes are being made to the overarching MPM framework for reviewable decisions, which is established under Part 6 of the WEM Regulations, and EPWA does not consider there to be any reversal of the onus of proof.</p> <p>The ERA has access to market information as they are responsible for monitoring Market Participant's compliance with the rules. For any suspected breach of the WEM Rules, the ERA will be required to conduct an investigation in accordance with clause 2.13.27 and establish there has been a breach, before commencing any enforcement action. Where there has been a breach of a civil penalty provision, the ERA may decide to issue a Category A, B or C penalty.</p> <p>Where a Market Participant has been adversely impacted by a decision of the ERA's, and it is a reviewable decision, the Market Participant may apply to the ERB for review of the decision in accordance with the regulations. This will apply to a decision by the ERA to issue a civil penalty notice. Under the regulations, the ERB will have the same powers as the original decision maker, may require any information from the decision</p>

Submission	Comments/Issue Raised	Requested Changes/Action	EPWA Responses
<b>Governance of the framework, including role of ERA</b>			
			maker as necessary, and may ultimately set aside or vary the decision under review.

## Appendix B. Cost Recovery Implications of the MPM Framework

Cost	Cost recovery stream	Potential risk to recovery
<b>Fixed Costs</b>		
<ul style="list-style-type: none"> <li>- Capital costs</li> <li>- Depreciation</li> <li>- Fixed operating and maintenance costs</li> <li>- Other fixed costs</li> </ul>	<p><u>Primary Cost Recovery Stream</u></p> <p>Reserve Capacity Mechanism (RCM)/Reserve Capacity Price (RCP)</p> <p><u>Secondary cost recovery stream</u></p> <p>Energy market and/or FCESS market prices (to the extent that clearing prices exceed a facility's production costs) and/or Large Scale Generation Certificates (LGCs) (if applicable)</p>	<p><b><i>Recovery of fixed costs through the Reserve Capacity Market</i></b></p> <ul style="list-style-type: none"> <li>• The Benchmark Reserve Capacity Price (BRCP) is based on the cost of new entry for an efficient new entrant capacity provider (currently based on a diesel-fuelled OCGT) with relatively low fixed costs relative to other technologies. Given this, generators with higher fixed costs are not expected to recover all of these costs in the Reserve Capacity Mechanism (RCM).</li> <li>• RCPs are pegged to the BRCP and decline if there is surplus capacity in the market, further reducing the ability for generators to recoup fixed costs through the RCM. This is the same dynamic that would occur in an energy-only market, where the spot price would be expected to tend to SRMC when there is an oversupply of capacity.</li> <li>• The <b>MPM framework</b> does not modify RCM arrangements, is intended to promote efficient market outcomes, and should not negatively impact supply and demand conditions in the WEM.</li> <li>• The appropriateness of the investment signals in the WEM are being modelled and considered in the RCM Review.</li> </ul> <p><b><i>Recovery of fixed costs through energy or FCESS markets</i></b></p> <ul style="list-style-type: none"> <li>• In workably competitive markets, in the absence of market power, Market Participants would be expected to offer their output at a price that closely reflects SRMC.<sup>4</sup> Despite this, energy market and FCESS prices may clear above the production costs of most generators, allowing these generators to recover of a portion of their fixed costs through the energy markets.</li> <li>• If the operating costs for a Facility are typically close to the relevant energy or FCESS clearing price, there is limited ability for that Facility to recoup a portion of its fixed costs through the energy or FCESS market so the Facility must recover the majority of its fixed costs in the RCM.</li> </ul>

<sup>4</sup> Biggar, D. The Theory and Practice of the Exercise of Market Power in the Australian NEM, 26 April 2011, p 4

Cost	Cost recovery stream	Potential risk to recovery
		<ul style="list-style-type: none"> <li>• The refinement of the <b>MPM framework</b> is to provide clarity and certainty regarding how the framework applies in practice. There are no changes to the MPM framework that would lead to the reduction of revenues for the various technologies in the WEM, or reduce the ability of Market Participants to capture the marginal price of energy or FCESS, as compared to existing arrangements: <ul style="list-style-type: none"> <li>○ The <b>General Trading Obligations and market power test</b> are intended to meet the Guiding Principles set forth by the Taskforce, and allow for the recovery of efficient costs by producers, and so should not adversely impact on the investment decisions of existing or prospective Market Participants.</li> <li>○ The <b>Energy and FCESS Offer Price Ceilings</b> will continue to reflect the highest cost Facility or Facilities in the SWIS, and so Market Participants should be no worse off under proposed arrangements in respect of their ability to capture marginal clearing prices that exceed production costs. <ul style="list-style-type: none"> <li>▪ The <b>Energy Offer Price Ceiling</b> will be based on the highest cost Facility or Facilities in the SWIS, focused on the operational circumstances that are likely to result in the highest operating costs. A margin and indexation will be applied so that the price cap is flexible to changing circumstances.</li> <li>▪ The <b>FCESS Offer Price Ceiling</b> will be based on estimates of reasonable operating costs for the most expensive FCESS provider(s) in the SWIS.</li> </ul> </li> </ul> </li> </ul> <p><b><i>Recovery of fixed costs through Large-scale Renewable Energy Certificates (LGCs)</i></b></p> <ul style="list-style-type: none"> <li>• A renewable generator may qualify for LGCs as an accredited power station under the Commonwealth Large-scale Renewable Energy Target. It may obtain revenue from trading LGCs (liable entities must surrender a certain number of LGCs based on the volume of electricity they acquire each year), allowing it to recover of a portion of its fixed costs.</li> <li>• The <b>MPM framework</b> does not intend to reduce the ability of Market Participants to obtain revenue through the creation and trade of LGCs.</li> </ul>

Cost	Cost recovery stream	Potential risk to recovery
<b>Variable costs</b>		
<ul style="list-style-type: none"> <li>- <b>Start-up costs</b></li> <li>- <b>Min-gen costs</b></li> <li>- <b>Shutdown costs</b></li> <li>- <b>Fuel costs</b></li> <li>- <b>Opportunity costs of fuel (or battery changing source)</b></li> <li>- <b>Other variable costs</b></li> </ul>	<p><u>Primary Cost Recovery Stream</u></p> <p>Energy market</p> <p><u>Secondary cost recovery stream</u></p> <p>FCESS market and/or FCESS Uplift Payment<sup>5</sup></p>	<p><b><i>Recovery of variable costs in the energy market</i></b></p> <ul style="list-style-type: none"> <li>• The MPM framework has been developed to be consistent with Guiding Principles agreed by the Taskforce that are aimed at ensuring the recovery of efficient costs by energy producers.<sup>6</sup></li> <li>• <b>The General Trading Obligations</b></li> <li>• have been designed to provide greater clarity and certainty to Market Participants of the costs that should be included in offers, both by removing terminology under existing obligations that might constrain incorporation of these costs, and by providing greater direction to the ERA. <ul style="list-style-type: none"> <li>○ Amendments to existing arrangements should provide greater confidence to Market Participants of their ability to recover start-up and shutdown costs, and other variable costs, through energy offer prices.</li> <li>○ Arrangements would remove existing provisions that prevent Market Participants offering prices above reasonable expectations of SRMC<sup>7</sup> and provide instead that a Market Participant must offer prices in Submissions that reflect the costs that a Market Participant without market power would include in forming its profit-maximising offer. <ul style="list-style-type: none"> <li>▪ This should improve the certainty associated with the status of start-up and shutdown costs compared to the previous SRMC requirements.</li> </ul> </li> <li>○ Offer assessment under Stage 2 of the market power test will be consistent with the General Trading Obligations, in that the ERA will assess whether the prices offered by a Market Participant in a Submission(s) for a Facility are consistent with the costs that a Market Participant without market power would include in forming its profit-maximising offer</li> </ul> </li> </ul>

<sup>5</sup> This is an additional payment that would be made to FCESS providers where enablement costs are not fully accounted for in FCESS clearing prices – see section 2.5.2 for further detail.

<sup>6</sup> Guiding Principle 1

<sup>7</sup> Where such behaviour relates to market power, see WEM Rules clauses cl 6.6.3 (STEM), 7A.2.17 (Balancing Market), and 7B.2.15 (LFAS Market)

Cost	Cost recovery stream	Potential risk to recovery
		<ul style="list-style-type: none"> <li>▪ The WEM Rules will prescribe that the ERA must publish an Offer Construction Guideline setting out start-up and shutdown costs (as well as reasonable amortisation of these costs across Trading and Dispatch Intervals) and guidance on treatment of fuel costs.<sup>8</sup></li> <li>▪ The ERA will be required to have regard to the Offer Construction Guideline when conducting offer assessment, and the Offer Construction Guideline will be subject to significant consultation with stakeholders. <ul style="list-style-type: none"> <li>○ EPWA considers that these MPM framework settings are likely to improve the ability for Market Participants to recover variable costs, as compared to existing arrangements.</li> </ul> </li> <li>• The <b>Energy Offer Price Ceiling</b> will continue to reflect the highest cost Facility or Facilities in the SWIS, focused on the operational circumstances that are likely to result in the highest operating costs. This will ensure that all resources in the WEM will be able to recover their costs for the provision of energy, while also allowing Facilities with lower variable costs to recover a portion of their fixed costs.</li> </ul> <p><b><i>Recovery of relevant costs in the FCESS market</i></b></p> <ul style="list-style-type: none"> <li>• The <b>market power test</b> will not be applied to FCESS offers, with MPM in the FCESS Markets to rely on the SESSM and compliance with General Trading Obligations.<sup>9</sup> <ul style="list-style-type: none"> <li>○ The ERA will be required to develop and publish guidance on how it would interpret the Offer Construction Obligation, including the application of these obligations to FCESS offers.</li> <li>○ The ERA will also be required to publish FCESS pricing benchmarks.</li> </ul> </li> <li>• The <b>FCESS Offer Price Ceiling</b> will be based on estimates of reasonable operating costs for the most expensive FCESS provider(s) in the SWIS. This is expected to allow generators with the highest FCESS operating costs to recover these costs while also allowing Facilities with lower FCESS operating costs to recover a portion of their fixed costs.</li> <li>• The co-optimisation and pricing algorithms of the RTM readily allow for calculation and addition of opportunity costs and Enablement Losses to the market clearing prices. This will be accompanied by a FCESS Uplift Payment to</li> </ul>

<sup>8</sup> See section **Error! Reference source not found.**

<sup>9</sup> See section 3.3

Cost	Cost recovery stream	Potential risk to recovery
		<p>compensate Enablement Losses where these are not priced into market clearing prices. This provides greater certainty relative to the current market that these costs will be adequately compensated.</p> <ul style="list-style-type: none"> <li>• In combination, these arrangements will ensure that all FCESS providers in the WEM will be able to recover their opportunity costs associated with participation in FCESS markets as they will:               <ul style="list-style-type: none"> <li>○ allow the FCESS clearing price to exceed the FCESS price cap where necessary to compensate opportunity costs (i.e. revenues that would have otherwise been received in the energy market);</li> <li>○ include a separate FCESS Uplift Payment to compensate Enablement Losses where start-up costs are not automatically priced into the FCESS market and are not covered in the energy price.</li> </ul> </li> </ul>
<b>FCESS operating costs</b>	<u>Primary Cost Recovery Stream</u> FCESS market <u>Secondary cost recovery stream</u> Uplift Payment	<ul style="list-style-type: none"> <li>• The <b>FCESS Offer Price Ceiling</b> will not restrict the recovery of operating costs, even where start-up costs are not automatically priced into the FCESS market and not covered in the energy price. The MPM framework includes a separate FCESS Uplift Payment to compensate Enablement Losses.</li> <li>• See also the discussion on FCESS costs above.</li> </ul>

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