

7 March 2023

Our Ref: CWF-20220307

Ms Dora Guzeleva
Director Wholesale Markets
Energy Policy WA

Via email: energymarkets@dmirs.wa.gov.au

Dear Ms Guzeleva

Market Power Manipulation Exposure Draft 2

Collgar Renewables welcomes the opportunity to respond to Energy Policy Western Australia’s (EPWA) Market Power Mitigation – Wholesale Electricity Market (WEM) Amending Rules - Exposure Draft #2.

Designing and implementing a suitable market power mitigation framework can pose significant challenges. The framework must strike a delicate balance between promoting competition and ensuring that Market Participants with significant market power are appropriately regulated. Given these considerations, Collgar broadly supports the amendments proposed in Exposure Draft 2.

However, Collgar has several concerns and comments as outlined below:

Clause(s)	Comments
2.16A.1 2.16D.1	<p>The removal of the "with market power" criterion from clause 2.16A.1 may have a material impact on smaller Market Participants.</p> <p>The removal of the criterion does provide clarity and remove ambiguity as to which participants are required to comply with this clause.</p> <p>However, as a result of this amendment all participants who submit offers into the STEM or Real Time Markets will now be required to offer as if they had significant market power. This change will likely increase the regulatory burden on smaller market participants, who may not have the market position adversely impact market power.</p> <p>The amendment effectively places an obligation on all Market Participants to consider their offers reflect the hypothetical market power they would have if they were a dominant supplier. This may result in material changes to the way smaller market participants are required to offer which in turn could impact their competitiveness in the market. As a consequence, smaller Market Participants may face challenges in meeting these new requirements.</p>

Clause(s)	Comments
	<p>In order to assess if a Market Participant has Market Power, the Economic Regulation Authority (ERA) propose using a gateway test. This aim of this test is to determine whether a Market Participant has sufficient market power to affect their ability to set prices. Without the market power criterion in clause 2.16A.1, Market Participants who would not typically be captured by the ERA's test may now be required to offer in materially different ways than they would otherwise. This may impact their ability to compete effectively in the market.</p> <p>The ERA's offer construction guidelines are currently limited in their ability to consider contractual arrangements when assessing offers made into the market. With the removal of the market power criterion, we consider the ERA will be required to consider these arrangements more closely, which could result in changes to the way offers are constructed.</p> <p>Additionally, we consider there is currently insufficient definition in the WEM Rules and guidelines as to what constitutes "costs". The removal of the market power criterion without additional information as to what constitutes efficient costs may exacerbate these issues, as Market Participants seek to offer market submissions that reflect their actual costs.</p>
2.16C.10	<p>The current drafting of the clause requires the ERA to notify a Market Participant of a breach of clause 2.16C.5 one day prior to the publication.</p> <p>Collgar proposes amending this to at least five business days.</p>
2.16C.5 2.16C.6	<p>There may be circumstances where the ERA determines that there is little or no public benefit in investigating a breach of market power or irregular pricing offer. As such, it may be beneficial to make these clauses discretionary by amending "must" to "may".</p>
2.16D.1	<p>The ERA has published its draft Offer Construction Guideline and sought feedback on the draft. Amendments to the WEM Rules in this Exposure Draft #2 may require the ERA to further amend its guideline. Collgar has previously stated its view that it is imperative for the guideline and exposure draft to be released simultaneously to avoid material compliance risks on market participants. Noting that the final guideline has likely not been published, Collgar suggests that there remains ambiguity as to what constitutes a legitimate cost. Given this ambiguity, the drafting of this clause may place Market Participants in a position of compliance risk due to lack of clarity as to what constitutes a cost.</p> <p>Subclause (a)iii includes costs applicable to take or pay contracts. There may be other contractual costs that may be relevant to include in a profit maximising offer. Collgar suggests amending the wording of subclause (a)iii to include 'or other contractual costs'.</p>

Thank you for considering this submission. Collgar would be happy to discuss these comments with you should you require further information.

Yours sincerely



Jake Flynn

Regulatory and Trading Specialist