

Our ref: 30117241

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Energy Policy Western Australia  
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Dear Energy Policy Western Australia

**Draft WEM Procedure: Dispute Resolution Mechanism for the Release of Market Information**

Synergy welcomes the opportunity to provide feedback to Energy Policy Western Australia (EPWA) in relation to the above (**draft DRM procedure**).

The draft DRM procedure has been developed in accordance with clause 10.5.2 of the Wholesale Electricity Market (**WEM**) Amendment (Tranche 6 Amendments) Rules 2022 and outlines:

- the method by which a notice of dispute is to be provided to the Coordinator of Energy (**COE**)
- the process by which the COE will resolve disputes
- the dispute resolution process timeframes
- related processes to be followed by the COE and Rule Participants.

The WEM Rules require the COE to publish a procedure with information about assessing confidentiality to improve transparency and consistency in decision making across different Information Managers.

Synergy supports the draft DRM procedure to assist in delivering better regulatory decisions and outcomes. From an Information Stakeholder's perspective, Synergy considers the procedure to be well drafted. In reviewing the draft DRM procedure Synergy has several suggestions for improvement as detailed in the attachment to this submission.

Please contact me should you have any queries in relation to this submission.

Yours sincerely

A handwritten signature in blue ink, appearing to read "S. Thackray".

**SIMON THACKRAY  
HEAD OF REGULATION AND COMPLIANCE**



Section	Issue
1.2.2(d) and 1.3.1	There is an inconsistency between these two sub-sections in relation to the application of the draft DRM procedure.
2.2.1	It would be useful to include a link to the notice of dispute form in the draft DRM procedure at the time the procedure takes effect.
3.2.6	The draft DRM procedure should require the COE to advise the disputing party and the relevant Information Manager as to the reasons of their decision. It is not reasonable for the COE to simply refer the relevant parties to a previous determination in isolation.
3.2.7	<p>In event the COE is the Information Manager the subject of a dispute, the draft DRM procedure should provide market certainty as to who will determine the dispute and not “a person”. In that regard, Synergy considers the COE’s alternate should be the independent Economic Regulation Authority and this should be specified in the procedure as follows:</p> <p>“If the Coordinator is the Information Manager, the Coordinator must delegate to <del>the Economic Regulation Authority a person that is not involved in the management of the relevant Market Information</del>, the determination for the dispute as outlined in paragraph 3.2.8 of this WEM Procedure.”</p>
3.2.8	<p>The WEM Rules explanatory notes state the WEM Rules allow for the COE to publish a procedure with information about assessing confidentiality, as this may be desirable to improve transparency and consistency in decision making across different Information Managers<sup>1</sup>. Synergy agrees with this intent.</p> <p>The draft DRM procedure however provides little public guidance as to how the COE will actually assess confidentiality. Consequently, Synergy recommends the draft DRM procedure specifies the key criteria the COE must take into account when assessing the confidentiality of information. At a minimum, the COE should consider:</p> <ul style="list-style-type: none"> <li>• Is the information inherently confidential or commercially sensitive?</li> <li>• Would the information if disclosed, be contrary to an Information Stakeholder’s legitimate business interests?</li> <li>• Does the information to be disclosed contain intellectual property?</li> <li>• Would the information if disclosed affect market operation security?</li> <li>• Would the information if disclosed cause a detriment to an Information Stakeholder?</li> <li>• In the event the information disclosure causes a detriment to an Information Stakeholder’s legitimate business interests, does the public benefit in disclosing the information outweigh the detriment to the Information Stakeholder?.</li> </ul>

<sup>1</sup> WEM Rules – consolidated companion version prepared as at 22 July 2023 page 835.

Section	Issue
3.3	<p>Where the COE makes a determination to publish Market Information the subject of a dispute there should be a requirement on the COE to advise the parties to the dispute the reasons why the COE considers:</p> <ul style="list-style-type: none"> <li>(a) disclosing the Market Information would not cause detriment to an Information Stakeholder; or</li> <li>(b) the public benefit in disclosing the Market Information outweighs any detriment to an Information Stakeholder.</li> </ul>
3.4.1(b)	<p>There should be a qualifier to this sub-section that permits the publication of summary details of the submissions or justifications (opposed to the actual submissions and justifications) in the event submissions or justifications contain confidential information.</p>