



Wholesale Electricity Market – Generator Arbitrators

Background

The Energy Transformation Taskforce (Taskforce) was established by the Minister for Energy, the Hon. Bill Johnston MLA, in May 2019 to deliver of the Western Australian Government’s Energy Transformation Strategy. Led by the Independent Chair, Mr Stephen Edwell, the Taskforce has overseen the delivery of a program of work to fundamentally redesign the existing Wholesale Electricity Market (WEM) Rules to enhance the security and reliability of the power system and improve the operation of the WEM. The Taskforce is supported by Energy Policy WA (EPWA).

In particular, the standards for generators connecting to the South West Interconnected System (SWIS), known as Generator Performance Standards¹ (GPS), have been revised and relocated from Western Power’s Technical Rules to the WEM Rules. This allows for an improved compliance regime and provides for the Australian Energy Market Operator (AEMO) to have an equal role (along with Western Power) in the negotiation of these standards prior to connection.

From early 2021, the WEM Rules will include a requirement for Western Power to develop a centralised register containing the individual standards for all transmission connected generating systems participating in the WEM, and for generators to monitor ongoing performance against these registered standards through AEMO-approved Generator Monitoring Plans.

Transitional Arrangements

The [Tranche 1 WEM Amending Rules](#) (Tranche 1 Amendments) introduce transitional arrangements for existing transmission connected generating systems (existing generators) to agree a set of Registered GPS, and a Generator Monitoring Plan. A process for arbitration has been established where a Market Participant and Western Power cannot agree in relation to GPS to be registered, or where a Market Participant and AEMO cannot agree in relation to a Generator Monitoring Plan.

The dispute resolution process is bespoke, noting the technical nature of GPS. The process will also be time-limited – with all existing generators expected to have Registered GPS in place by 31 January 2022 and an approved Generator Monitoring Plan agreed by 1 August 2022 (although extensions to these dates are permitted by mutual agreement).

¹ GPS comprise each of the Technical Requirements as outlined in Appendix 12 of the Tranche 1 Amendments.

Under the Tranche 1 Amendments, the Coordinator of Energy (Coordinator) has an obligation to appoint one Primary Generator Arbitrator, and at least two Secondary Generator Arbitrators, by not later than 1 April 2021².

The Coordinator must also develop a WEM Procedure – the WEM Procedure: Dispute Resolution Mechanism for Existing Transmission Connected Generating Systems ([currently in draft form and undergoing consultation](#)) – that sets out the process for referring matters to the Generator Arbitrator, the manner in which the dispute is to be resolved (including how costs are to be awarded), and reasons where the Coordinator may determine that a Secondary Generator Arbitrator may be used. The Coordinator is responsible for referring a dispute for arbitration once it has been determined that the process(es) outlined in the WEM Procedure have been followed, with EPWA providing support to the Coordinator.

The Primary Generator Arbitrator is to be appointed hear any disputes and make a binding decision. A Secondary Generator Arbitrator may be called upon to hear disputes in instances where the Primary Generator Arbitrator cannot hear a dispute for reasons set out in Part 2.4 of the draft WEM Procedure. It is expected that these appointments will be in place until 1 August 2022, with the ability to be extended by at least 12 months, if required.

Once the Coordinator has referred a dispute for arbitration, the Tranche 1 Amendments provide guidance in relation to the timeframe for the dispute to be resolved and how costs are awarded, noting there is flexibility for other arrangements by agreement, and further detail provided in the Coordinator’s WEM Procedure.

The Coordinator must also appoint a Technical Panel of Experts and the Generator Arbitrator may appoint one or more experts from a Panel appointed by the Coordinator to provide advice, subject to certain requirements including the nature of the advice being sought and an estimate of the cost. Costs incurred in appointing an expert from the Technical Panel are to be recovered from Parties to the Dispute, with payment arrangements through the Generator Arbitrator.

The Tranche 1 Amendments allow for Parties to settle the dispute during the arbitration process, or via a final and binding determination by the Generator Arbitrator, with the Generator Arbitration Decision to be recorded in writing and published (subject to confidentiality requirements) to provide transparency to other Market Participants. The Generator Arbitrator is provided with immunity when acting in good faith in a provision that reflects section 39 of the *Commercial Arbitration Act 2012* (WA).

Prior to applying, please refer to **sections 1.39-1.42** of the Tranche 1 Amendments for the detail of the processes which Western Power and AEMO are to follow with existing generators prior to commencing the dispute resolution process.

Links:

- **WEM Rules: Tranche 1 Amendments:** <https://www.erawa.com.au/rule-change-panel/wholesale-electricity-market-rules>
- **Draft WEM Procedures:** <https://www.wa.gov.au/government/publications/draft-wholesale-electricity-market-procedures-consultation>

² Following appointment, the Coordinator must publish the names and relevant details, tenures, remuneration and expense provisions of the appointees within 5 days.

Selection Criteria

In determining who shall be appointed as Generator Arbitrators, the Coordinator will consider the following:

- Suitable qualifications and experience in commercial arbitration, including experience in energy sector arbitration (WEM experience is desirable).
- Noting the need to avoid actual, potential or perceived conflicts of interest with the subject matter or Parties to the dispute, the applicant must not currently be working with (including as a contractor) a party likely to be subject to a dispute, including Western Power, AEMO, or a transmission connected Market Participant with generating facilities likely to be captured under sections 1.40 and 1.41 of the Tranche 1 Amendments.
- Value for money³, taking into account fees and charges, including fixed or capped rates for specified categories of dispute.
- Location, with a preference for a Perth-based arbitrator. The appointed Generator Arbitrator must have access to appropriate support including secretariat and financial services such as record keeping, access to suitable meeting rooms, billing and collection facilities etc.

Assessment Process

The Coordinator will appoint the Primary Generator Arbitrator and at least two Secondary Generator Arbitrators in accordance with section 2.2D of the Tranche 1 Amendments. An assessment panel will be established within Energy Policy WA to review applications before making recommendations to the Coordinator.

All applicants are asked to provide a resume and cover letter (of no more than 3 pages) addressing the selection criteria. If appointed, you must also provide a short statement of qualifications and experience and a schedule of fees and charges that is suitable for publication (in accordance with clause 1.42.3). Please indicate if you are applying to be considered for only one of the roles (Primary Generator Arbitrator, or Secondary Generator Arbitrator). Where this is not specified on an application, the Coordinator will consider the applicant for both roles.

For further information please contact Brooke Eddington, Principal Policy Analyst, Power System Security and Reliability on (08) 6551 4659 or brooke.eddington@energy.wa.gov.au

Please submit applications marked "GPS Generator Arbitrators EOI" to energytransformation@energy.wa.gov.au by **Friday 22 January 2021**.

³ While the Coordinator is not directly procuring the services, the cost of disputes will flow through to the market and/or energy consumers therefore the Coordinator must consider whether the rates proposed present value for money.