



Wholesale Demand Response Participation Guidelines

Draft Decision and Notice of Consultation

July 2021

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Glossary

Shortened form	Extended form
AEC	Australian Energy Council
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
DRSP	Demand Response Service Provider
Final Determination	AEMC, <i>Wholesale demand response mechanism</i> , Rule determination, 11 June 2020
Final Rule	National Electricity Amendment (Wholesale demand response mechanism) Rule 2020 No. 9
MEU	Major Energy Users, Inc.
NEL	National Electricity Law
NEM	National Electricity Market
NER	National Electricity Rules
PIAC	Public Interest Advocacy Centre
ST PASA	Short Term Projected Assessment of System Adequacy
WDR	Wholesale Demand Response
WDRM	Wholesale Demand Response Mechanism
WDRP Guidelines	Wholesale Demand Response Participation Guidelines
WDRU	Wholesale Demand Response Unit

Notice of Consultation on Draft Wholesale Demand Response Participation Guidelines

On 11 June 2020, the Australian Energy Market Commission (AEMC) published its Final Rule determination to introduce a new Wholesale Demand Response Mechanism (WDRM) into the National Electricity Market (NEM).¹ Under this rule, eligible customers will be able to sell demand response into the NEM from the effective date, 24 October 2021.

As part of these reforms, the Final Rule requires the Australian Energy Regulator (AER) to develop and publish Wholesale Demand Response Participation Guidelines (WDRP Guidelines). The WDRP Guidelines will set out information that Demand Response Service Providers (DRSPs) must retain in relation to their compliance with National Electricity Rules (NER) obligations under the Final Rule.

The AEMC's Final Determination noted that the purpose of the relevant information retention requirements under the Final Rule is to assist the AER in its market monitoring role and to assess whether DRSPs are meeting their obligations.²

The NER requires the WDRP Guidelines to include guidance about information DRSPs must retain regarding compliance with their obligations in relation to the following:³

- *wholesale demand response (WDR) dispatch bids* and declared *available capacity*;
- the provision of a particular *available capacity* of a non-conforming *wholesale demand response unit (WDRU)* in compliance with an Australian Energy Market Operator (AEMO) notice under clause 3.8.23A(e);
- the establishment and implementation of measures in accordance with *good electricity industry practice* to identify whether a WDRU is *baseline non-compliant* or will be, or is likely to be, *spot price exposed* in relation to a *trading interval*, and the associated obligations not to bid into the market at these times; and
- the obligation that offers, bids and rebids must not be false or misleading.

The Final Rule also provides that the WDRP Guidelines may include guidance about DRSP obligations in relation to bidding WDRUs when they are *baseline non-compliant*, or when they will be, or are likely to be, *spot price exposed*.

This is a new market mechanism that introduces a new participant category and new compliance obligations. The AER's WDRP Guidelines consultation commenced with the publication of an Issues Paper in March 2021 seeking stakeholder feedback on our proposed approach to record keeping obligations and areas where compliance guidance on DRSP obligations may be warranted.

We now present the Draft WDRP Guidelines, which include responses to submissions made to the Issues Paper. The AER welcomes stakeholders' views on our draft record keeping

¹ Available on the [AEMC website](#).

² See AEMC WDRM Final Determination, p. 183.

³ See clause 3.8.2A(g) of the Final Rule.

obligations, which will inform the Final WDRP Guidelines. These Guidelines must be published by 24 October 2021 to take effect from the operational commencement of the WDRM.

Invitation to make submissions

The AER invites interested parties to make written submissions in response to the Draft Decision and Draft WDRP Guidelines by the close of business 13 August 2021.

Submissions should be sent electronically to: AERCompliance@ aer.gov.au with the following email title: Wholesale Demand Response Participation Guidelines – Draft Guidelines.

We ask that all submissions sent in an electronic format are in Microsoft Word or other text readable form.

Alternatively, submissions may be sent to:

General Manager–Compliance and Enforcement
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Submissions provided electronically do not need to be provided separately in hard copy.

Confidentiality

The AER will treat all submissions as public documents unless otherwise requested.

To facilitate an informed and transparent consultative process we prefer all submissions to be publicly available. Parties wishing to submit confidential information are requested to:

- clearly identify the information that is the subject of the confidentiality claim; and also
- provide a separate, non-confidential version of the submission in a form suitable for publication.

All non-confidential submissions will be published on our website. For further information regarding the use and disclosure of information provided to us, see the [ACCC/AER Information Policy](#), published June 2014.

Please direct any queries about this Draft Decision and the Draft WDRP Guidelines, or about lodging submissions, to AERCompliance@ aer.gov.au.

Next steps

Stakeholder submissions to the Draft Decision and the Draft WDRP Guidelines are due 13 August 2021.

We will then commence development of the Final WDRP Guidelines, to be published on or before the effective date of 24 October 2021.

1. Introduction

As noted above, the Final Rule introduced a Wholesale Demand Response Mechanism (WDRM) into the NEM. Through the WDRM, eligible participants will be able to sell demand response into the NEM from 24 October 2021.

As part of the implementation of the Final Rule, NER clauses 11.125.4 and 3.8.2A(g) require the AER to develop WDRP Guidelines in accordance with the *Rules consultation procedures* set out in clause 8.9 of the NER. Under the Final Rule, the WDRP Guidelines:

- (1) must include guidance about information DRSPs must keep regarding compliance with their obligations under clause 3.8.2A and regarding their representations under clause 3.8.22A(a2); and
- (2) may include guidance relating to the requirements on DRSPs under clauses 3.8.2A(c) and (d).

This Draft Decision document should be read alongside the Draft WDRP Guidelines. The Draft Decision and Draft WDRP Guidelines consider the information and records that DRSPs must keep regarding compliance with their obligations arising out of the Final Rule.

In accordance with our obligations under the *Rules consultation procedures*, the Draft WDRP Guidelines set out our conclusions. This Draft Decision details our determination, as well as the procedures we followed in considering the issues, our underlying reasons, summaries of issues raised by stakeholders and AER responses, as well as a notice inviting submissions in relation to the Draft WDRP Guidelines.

Stakeholders should note the Draft WDRP Guidelines are not intended to detail the AER's methods or approaches to regulatory compliance and enforcement as they relate to DRSPs. Similarly, the Draft WDRP Guidelines do not set out a new or distinct approach to how the AER will undertake its compliance and enforcement responsibilities as they relate to DRSPs and the WDRM.

If stakeholders are interested in understanding more about the AER's approach to monitoring compliance with and enforcing the national energy laws, including the future regulation of DRSPs, we refer interested parties to the AER Compliance and Enforcement Policy.⁴

1.1. Previous Consultation

On 12 March 2021, we published a Notice of Consultation and Issues Paper in relation to the development of the WDRP Guidelines (Issues Paper). The Issues Paper discussed key issues and asked specific questions about the information and records that should be kept by DRSPs as part of their participation in the WDRM. Consultation closed on 23 April 2021, and we received six submissions.⁵

⁴ Available on the [AER website](#).

⁵ Available on the [AER website](#).

1.2. Process for Development

In developing the Draft WDRP Guidelines we have had regard to the National Electricity Objective.⁶

We have also considered the Determinations published by the AEMC in the development of the WDRM,⁷ as well as the *wholesale demand response guidelines* published by AEMO.⁸

Finally, we have considered the views and issues put forward by stakeholders in response to the Issues Paper. Part 2 of this document provides a summary of the issues raised in submissions and our responses to them.

1.3. Relevant Rules

Under clauses 11.125.4 and 3.8.2A(g) of the NER, the AER must develop WDRP Guidelines in accordance with the *Rules consultation procedures* set out in clause 8.9 of the NER. The WDRP Guidelines:

- (1) must include guidance about information DRSPs must keep regarding compliance with their obligations under clause 3.8.2A and regarding their representations under clause 3.8.22A(a2); and
- (2) may include guidance relating to the requirements on DRSPs under clauses 3.8.2A(c) and (d).

Clause 3.8.2A provides:

- (a) A DRSP must submit a *dispatch bid* in respect of its *wholesale demand response unit* (WDRU) or, if aggregated, the aggregated WDRUs, for each *trading day* in accordance with clause 3.8.7B.
- (b) When a DRSP provides to AEMO for the purposes of the *Rules* the *available capacity* of a WDRU or the aggregated WDRUs, the DRSP must ensure that:
 - (1) the *available capacity* it provides to AEMO for a WDRU that is not aggregated is equal to or less than the *maximum responsive component* of the WDRU; and
 - (2) the *available capacity* it provides to AEMO for aggregated WDRUs is equal to or less than the aggregate *maximum responsive component* of the aggregated WDRUs.
- (e) If AEMO has given a notice under clause 3.8.23A(e) in relation to a WDRU or aggregated WDRUs, from the time the notice takes effect and for so long as the notice remains in place, the DRSP must provide to AEMO an *available capacity* for the WDRU or aggregated WDRUs in accordance with the notice.
- (f) Without limiting paragraph (c) or (d), a DRSP must establish and implement measures in accordance with *good electricity industry practice* to identify:
 - (1) a WDRU of the DRSP that is *baseline non-compliant*; and

⁶ National Electricity Law, section 7.

⁷ Available on the [AEMC website](#).

⁸ Available on the [AEMO website](#).

- (2) when a WDRU of the DRSP will be, or is likely to be, *spot price exposed* during a relevant *trading interval*.

Clause 3.8.22A(a2) provides that the making of a *wholesale demand response dispatch bid* by a DRSP is deemed to represent to other *Market Participants* through the *pre-dispatch schedules published by AEMO* that:

- (1) any *baseline deviation* of the WDRU in response to a *dispatch instruction* will be the result of *wholesale demand response activity* in relation to the WDRU; and
- (2) there will be no baseline deviation offset in relation to the baseline deviation of the WDRU in the period for which the WDRU is dispatched.

Clause 3.8.2A(c) provides that if a DRSP is aware (whether by reason of the DRSP's own knowledge or a notification from *AEMO*) at the time the DRSP provides *available capacity* of a WDRU or aggregated WDRUs to *AEMO* for the purposes of the *Rules* that:

- (1) the WDRU is *baseline non-compliant*, or
- (2) in relation to aggregated WDRUs, any of the WDRUs in the WDRU is *baseline non-compliant*,

the DRSP must provide to *AEMO* an *available capacity* of zero for the WDRU or aggregated WDRUs.

Clause 3.8.2A(d) provides that if, in relation to a *trading interval*:

- (1) a WDRU will be, or is likely to be, *spot price exposed*; or
- (2) in relation to aggregated WDRUs, any of the WDRUs in the aggregated WDRU will be, or is likely to be, *spot price exposed*,

the DRSP must provide to *AEMO* an *available capacity* of zero for the WDRU or aggregated WDRUs in relation to the *trading interval*.

2. Consideration of issues raised in submissions

In response to the Issues Paper we received submissions⁹ from the following stakeholders:

- AGL;
- Australian Energy Council (AEC);
- Enel X;
- Hydricity Systems;
- Major Energy Users (MEU); and
- Public Interest Advocacy Centre (PIAC).

We note that the submission from Hydricity Systems primarily concerned matters related to the ‘market design for valley-filling demand response’. We have determined the matters raised in this submission are out of scope, and therefore it has not been considered further in the development of the Draft WDRP Guidelines.

Similarly, some of the content of the submissions from MEU and PIAC related broadly to the WDRM design but were not responsive to the questions asked or the matters raised in the Issues Paper. Consequently, those aspects of the submissions from MEU and PIAC have not been considered further in the development of the Draft WDRP Guidelines.

2.1. Questions from the Issues Paper

In the Issues Paper we asked 11 questions of stakeholders relating to the development of the WDRP Guidelines. Broadly, these questions covered the following issues:

- regulatory impacts and costs of proposed DRSP information retention requirements;
- the types of information and records that should be retained by DRSPs, such as information and records relating to:
 - dispatch offers;
 - available capacity;
 - communication with AEMO (for example, where a WDRU has been identified as non-conforming);
 - the requirement that offers, bids and rebids must not be false or misleading;
 - identifying and bidding WDRUs that are baseline non-compliant; and
 - identifying and bidding WDRUs that will be, or are likely to be, spot price exposed;
- whether additional guidance or information from the AER may help stakeholders to understand DRSP obligations to:
 - provide an available capacity of zero for WDRUs that are baseline non-compliant; and

⁹ Available on the [AER website](#).

- provide an available capacity of zero for WDRUs that will be, or are likely to be, spot price exposed.

We discuss each of these issues below.

2.2. Regulatory impacts and costs of the proposed information retention requirements

One of the primary purposes of the WDRP Guidelines is to provide guidance about information and records that DRSPs must produce, maintain, and make available to the AER in order to comply with their record keeping obligations under the NER. The maintenance of this information and records by DRSPs in accordance with the WDRP Guidelines will enable the AER to carry out its regulatory responsibilities and support the integrity of the WDRM.

In the Issues Paper we noted our expectation that, in accordance with NER clause 1.9, all records and documents prepared for or in connection with participation in the WDRM be retained for a period of at least seven years. We also sought feedback from stakeholders as to the regulatory impacts and costs of the information retention requirements, and invited suggestions of alternative approaches that may reduce these impacts.

Generally, submissions such as those from AGL, the AEC, and Enel X agreed with the AER's position outlined in the Issues Paper. The AEC also noted that DRSPs' maintenance of the information and records in accordance with the WDRP Guidelines will facilitate the AER's assessment of the relevant provisions. To this end, the AEC stated that this information must be collected and maintained in a manner and form such that it is readily accessible upon AER request.

The MEU submitted that the AER's position reflects an underlying assumption that end users might abuse the WDRM and the WDRP Guidelines are developed to ensure this does not occur. On this basis, the MEU considered that the principles and approach outlined by the AER reflects a reasonable basis for the development of detailed guidelines to assist the AER in meeting its regulatory responsibilities under the WDRM.

However, the MEU also submitted that the imposition of onerous reporting requirements creates a risk of fewer end users providing demand response, noting that demand response is not the core business of its members, and that aggregator DRSPs might not be able to obtain the level of data from their aggregated loads that the AER requires under the WDRP Guidelines. Nonetheless, the MEU submitted that feedback from its members about the issues raised by the AER in the Issues Paper indicates that the AER approach is appropriate if minimising abuse of the WDRM is the focus.

We acknowledge that mitigating potential abuse of the WDRM was one of the focuses of the AEMC and certain stakeholders during the rulemaking process. However, our Draft WDRP Guidelines are not directed primarily at minimising abuse of the WDRM. Instead, the AER's focus is to encourage the development of robust systems and practices by DRSPs to ensure that the WDRM delivers the anticipated benefits to the market.

Accordingly, the focus of the Draft WDRP Guidelines is to provide guidance to DRSPs about information and records – including those that demonstrate the establishment of appropriate business processes, procedures, and training – that DRSPs must produce, maintain, and

make available to the AER to facilitate the development of robust systems and practices. As noted above, we consider that maintenance of the specified information and records in accordance with the WDRP Guidelines will enable the AER to carry out its regulatory responsibilities, which in turn will support the integrity of the WDRM.

PIAC submitted that information retention is a burden on DRSPs, and as such will increase the cost to participate in the WDRM. PIAC argued that burdensome information retention requirements can result in fewer end users providing demand response, and that aggregator DRSPs may be unable to procure much demand response due to concerns they might not be able to obtain the information required by the WDRP Guidelines.

In contrast, the AEC submitted that while information retention requirements will impose some compliance costs on DRSPs, the requirements to enable the AER to effectively monitor compliance with the obligations and thereby provide confidence around the integrity of the WDRM are necessary given the risks to electricity retailers that may arise out of DRSP participation in the WDRM. The AEC noted that most proposed information required to be kept by DRSPs under the WDRP Guidelines (as outlined in the Issues Paper) will be gathered and retained by DRSPs as part of their usual course of business. The AEC does not consider these compliance requirements represent a barrier to entry and participation in the WDRM.

In response to these submissions, the AER acknowledges that the information retention requirements to be established under the WDRP Guidelines will impose some compliance costs on DRSPs. With this in mind, we have endeavoured to balance the obligations on the AER – namely, to establish information retention requirements to enable the AER to effectively monitor compliance with the obligations, and to provide confidence in the integrity of the WDRM – with not creating compliance obligations that pose an unnecessary barrier to DRSP participation in the market.

We consider that the proposed information to be kept by DRSPs under the Draft WDRP Guidelines will be gathered and retained by DRSPs, or by the businesses responsible for the loads behind aggregated WDRUs, as part of their usual and prudent course of business. We also consider that DRSPs could include information and record sharing requirements in their contracts with the loads behind aggregated WDRUs, as discussed further in section 2.3 below.

2.3. Information and records that should be retained by DRSPs as part of their participation in the WDRM

As outlined in the Issues Paper, the AER expects DRSPs to retain, and to make available to the AER upon request, all relevant records and information which relate to or demonstrate the reasonable basis for:

- each wholesale demand response dispatch bid and rebid;
- the provision of declared available capacity to AEMO for each WDRU, aggregated or otherwise;
- ST PASA submissions; and
- the declaration of the maximum responsive component of each WDRU.

The Issues Paper also outlined the AER's expectation that DRSPs retain, and make available to the AER upon request, all relevant records and information relating to:

- any request from AEMO to submit a modified maximum responsive component, including any internal documents relating to the modification, and any DRSP responses to AEMO's request;
- a declaration or identification by AEMO of a relevant WDRU as non-conforming, including any AEMO request to provide a reason for non-compliance with a dispatch instruction, as well as DRSP responses to this request and supporting internal documents; and
- all actions to comply with any AEMO notice to limit the available capacity of a non-conforming WDRU; including any notice issued by AEMO under Final Rule clause 3.8.23A(e) and any variations issued under clause 3.8.23A(f)(2).

Further, as outlined in the Issues Paper, clause 3.8.22A(a2) of the NER requires that any WDR offered must be genuine – that is, it must be a response that would not have otherwise occurred but for the dispatch instruction, and not offset elsewhere simultaneously. Put simply, the response must be truly additional.

Similar to existing NER obligations on generators, a DRSP *dispatch bid* would likely be deemed to be false or misleading if the DRSP did not have a reasonable basis to make that representation or did not have a genuine intention to honour that representation.¹⁰

In its final determination, the AEMC provided the following examples of conduct that would not be considered additional (and therefore not satisfy the requirements of clause 3.8.22(a2) of the NER):

- a WDRU bid into the market despite the fact that the factory behind the *qualifying load* had previously decided to shut down for maintenance;¹¹
- a WDRU bid into the market despite the fact that the *qualifying load* had already decided to respond to a market event;¹² and
- load shifting within a site.¹³

The Issues Paper outlined that the AER expects DRSPs to retain, and to make available to the AER upon request, all relevant records and information in relation to the fulfilment of the NER obligation that all offers, bids and rebids must not be false or misleading. This information may include relevant plant production schedules or maintenance schedules, records of all loads contained within a site, or other loads that could replace or offset the load behind the WDRU, as well as any records or correspondence in relation to these matters to or from AEMO and DRSPs.

Submissions such as those from AGL, the AEC and Enel X generally supported the retention of records relating to participation in the WDRM as outlined in the Issues Paper.

¹⁰ AEMC WDRM Final Determination, p. 183.

¹¹ Ibid, p. 182.

¹² Ibid.

¹³ AEMC WDRM Final Determination, p. 121.

AGL submitted that DRSPs should retain in an accessible format standing documents prepared for the purpose of the WDRM obligations such as contractual agreements with WDRUs, internal procedures, WDRU verification protocols, and communication protocols. In addition, AGL considers that any documents or records of communications between the DRSP and relevant parties, such as between AEMO, DNSPs, WDRUs, would also need to be retained for the purposes of meeting the WDRM obligations.

However, AGL also submitted that at this early stage of the development of the WDRM, the AER should avoid, where possible, prescribing the documents or records that will need to be created and retained to meet the WDRM obligations. AGL's submission continues on to say that after the commencement of the WDRM, the AER could undertake an industry review of DRSPs' internal compliance procedures and communication protocols to meet these WDRM obligations. Following this review, the AER and industry may be better placed to consider if standardised information requirements for documentation and records are appropriate.

As mentioned in the Issues Paper, the AER considers a review of the WDRP Guidelines may be useful once the WDRM has been in effect for a period of time. We note it may be appropriate to review the WDRP Guidelines after the AEMC completes its scheduled three-year review of the mechanism.¹⁴ We would, however, also consider updating the WDRP Guidelines at an earlier stage if compliance issues become apparent and changes to the Guidelines were warranted to address these issues. In the interim, and as outlined in the Issues Paper and the Draft WDRP Guidelines, the AER has identified several categories of documents or records that we consider are necessary for DRSPs to create and retain.

The AEC submitted that records relating to participation in central dispatch must be of equivalence to those participating in the energy side of the market. It submitted that the records and information in relation to each wholesale demand response dispatch bid and provision of declared available capacity to AEMO for each WDRU would be retained by DRSPs as part of their usual course of prudent business operations, and therefore the AEC does not consider that these compliance requirements will be a legitimate barrier to their entry and participation in the WDRM.

The AEC also submitted that it expects that all DRSPs be required to retain all records and correspondence related to clause 3.8.2A(b), including any internal documents relating to the modification of the maximum responsive component, and any DRSP responses to AEMO's request, and noted that bid and offer validation data are the standard data requirements for verification and compilation of dispatch bids and dispatch offers.

The AEC further submitted that DRSPs should be required to keep all documents and records relating to fulfilling the obligation that all offers, bids and rebids are not false or misleading, as well as any records or correspondence to or from AEMO in this respect.

Enel X submitted that it is reasonable to expect DRSPs to record and retain information to demonstrate compliance with the various obligations of the mechanism. It considered that the types of information that DRSPs could reasonably be expected to record and retain to explain their WDR activity include emails to/from customers, records of phone calls with customers, staff correspondence via DRSPs' internal systems, and correspondence with AEMO.

¹⁴ As required by NER 3.10.7.

However, Enel X also submitted that the WDRP Guidelines should not mandate specific pieces of information that DRSPs must record and retain, particularly where that information is created and held by WDRU load customers. For example, Enel X referred to the AER's suggestion that DRSPs could retain and provide access to a WDRU's plant production and maintenance schedules to support an explanation of its WDR activity. Enel X considers that while aggregator DRSPs might be provided with their customers' production and maintenance schedules, this may not always be the case and will depend on each customer's willingness and ability to share that level of detail with its aggregator DRSP. Consequently, Enel X submitted that it is reasonable to expect DRSPs to retain this information if they have access to it, but it should not be requirement for customers to give access to it.

As noted above, the MEU submitted that the views outlined in the Issues Paper are appropriate if minimising abuse of the WDRM is the focus. However, like Enel X, the MEU expressed concern that the level of reporting required will have effects on aggregator DRSPs, as it will impose the same reporting requirements on the loads they contract with. In the MEU's view, this might limit the WDR that aggregator DRSPs are able to provide due to concerns they might not be able to obtain the data required under the WDRP Guidelines.

Similarly, PIAC submitted that DRSPs may not always have access to all documents and records relating to fulfilling their obligations around bidding. In PIAC's submission, it would be onerous, and in some cases impossible, for DRSPs to provide this information for all loads and bids/rebids. PIAC recommended that the AER not require DRSPs to retain information they may have considerable difficulty or incur costs to access. PIAC considers it appropriate for DRSPs to retain and make this information available wherever they have access to it and in relation to demand response events. PIAC also suggests the focus of retaining information should be to substantiate the reasonableness of DRSP bidding/rebidding behaviour, which can be achieved through a range of sources appropriate to the circumstance, not only production schedules.

PIAC also discussed their view that the AER's position within the Issues Paper appeared to be predicated on the idea that WDR providers are likely to manipulate or game the system. PIAC submitted that this was unlikely to occur for a number of reasons, and recommended the AER take a regulatory approach which acknowledges DRSPs and participating energy users have little incentive, and are unlikely, to manipulate or game market arrangements.

As discussed above, the AER has endeavoured to balance the obligations on the AER – namely, to establish information retention requirements to enable the AER to effectively monitor compliance with the obligations, and to provide confidence in the integrity of the WDRM – with not creating compliance obligations that pose an unnecessary barrier to DRSP participation in the market.

In relation to PIAC's submission that DRSPs should retain information and records specifically in relation to demand response events, we highlight that a demand response event could occur at any time that a WDRU is bid into the market, and will not be identified until after the event. Consequently, we consider that records relating to WDRU activity should be retained on an ongoing basis, rather than being sought or collated after an event.

We acknowledge PIAC's view that DRSPs have little incentive to game or manipulate the wholesale demand response market. However, as outlined above, the Draft WDRP Guidelines are not directed primarily at minimising abuse of the WDRM. Instead, the focus of the Draft

WDRP Guidelines is to provide guidance to DRSPs about information and records – including those demonstrating the establishment of appropriate business processes, procedures, and training – which DRSPs must produce, maintain, and make available to the AER. To that end, we consider that if DRSPs are not aware of, or do not possess, information and records relating to WDRUs (whether aggregated or otherwise) – including around production and maintenance schedules – DRSPs will not be capable of complying with their NER obligations to participate in the WDRM.

DRSPs, as Registered Participants, are responsible under the NER for the conduct of the WDRUs they bid into the market, whether those WDRUs are aggregated or otherwise. The fact that DRSPs may encounter difficulty or incur costs to obtain the relevant information and records from their aggregated loads is not a sufficient reason for DRSPs to not obtain and hold these records or information, particularly as the AER considers it is not possible for DRSPs to make accurate and/or genuine offers in the WDRM in the absence of these records and information. The AER considers that aggregator DRSPs could make information provision a condition of their contracts with the loads behind their WDRUs, which could assist DRSPs concerned about accessing these records or information.

As noted above, one of the roles of the AER is to monitor, investigate and enforce compliance with the NER.¹⁵ In order for the AER to monitor the participants' compliance with their NER obligations, it is necessary that those participants are able to provide records of their activities and intentions, including the activities and intentions of loads within an aggregation. Accordingly, it is essential that DRSPs have access to and act to retain the types of records and information that were outlined in the Issues Paper and have been incorporated into the Draft WDRP Guidelines.

2.3.1. Information and records that should be retained in relation to identifying and bidding WDRUs that are baseline non-compliant

In the Issues Paper we noted that the AER expects DRSPs to implement appropriate internal processes, procedures, and training to enable them to undertake ongoing monitoring of the performance of qualifying loads of a WDRU against the relevant baseline methodology and baseline settings, as well as to respond promptly to any identified baseline non-compliance by providing to AEMO an available capacity of zero for the relevant WDRU.

We also explained that we expect DRSPs to retain, and to make available to the AER upon request, documents and records demonstrating the establishment, implementation, and utilisation of such processes, procedures, and training.

Similarly, we noted our expectation that DRSPs would retain records relating to baseline compliance testing, whether undertaken routinely or in response to an AEMO communication regarding baseline non-compliance, as well as our expectation that DRSPs will retain records of any correspondence to or from AEMO in relation to a WDRU not meeting the baseline compliance standard.

In relation to this issue, PIAC submitted that it was unclear how regularly DRSPs are expected to undertake baseline compliance testing. PIAC submitted that the AER should provide clarity

¹⁵ See National Electricity Law clause 15.

on how often DRSPs are required to self-test, noting DRSPs will have to build this capability into their systems and more regular testing is a cost to DRSPs and participating energy users.

We have not included guidance related to an expected frequency of baseline testing in the Draft WDRP Guidelines, but note the frequency of prudent baseline testing would likely be plant dependent and influenced by individual operator practices. We also note that under NER clause 3.8.2A(f)(1):

... a Demand Response Service Provider must establish and implement measures in accordance with good electricity industry practice to identify ... a wholesale demand response unit of the Demand Response Service Provider that is baseline non-compliant.

Good electricity industry practice is defined in the NER as:

The exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected from a significant proportion of operators of *facilities* forming part of the *power system* for the *generation, transmission or supply* of electricity or the provision of *wholesale demand response* under conditions comparable to those applicable to the relevant *facility* consistent with *applicable regulatory instruments, reliability, safety and environmental protection*. The determination of comparable conditions is to take into account factors such as the relative size, duty, age and technological status of the relevant *facility* and the *applicable regulatory instruments*.

As outlined in the Issues Paper and the Draft WDRP Guidelines, the AER considers the key components of good electricity industry practice include effective:

- governance — internal arrangements encompassing reporting lines and supporting systems, including the level of involvement and commitment of senior management and committees as well as the overall compliance culture of the business;
- expertise — the human resources dedicated to technical compliance including the allocation of responsibilities, the underlying knowledge systems, and the nature and extent of the technical understanding of applicable obligations;
- implementation — the means by which, at a practical level, participants drive and promote compliance through internal procedures and processes, encompassing staff training, technical testing and reporting of compliance matters; and
- performance — the overall compliance status of each participant with reference to how effectively compliance programs and arrangements operate, including the ongoing evaluation and updating of such programs and arrangements to reflect lessons learnt.

It is the AER's view that in deciding how often to undertake baseline compliance testing, DRSPs should:

- consider the definition of good electricity industry practice;
- undertake a risk assessment of their load profile, including the volatility of that profile and any changes to equipment;
- consider the change management processes governing any changes to, or maintenance of, equipment critical to delivering demand response; consider the

requirements outlined by AEMO in their Baselines Eligibility Compliance and Metrics Policy;¹⁶ and

- consult with AEMO as necessary.

Consistent with the AER's Compliance and Enforcement Policy, businesses are responsible for developing and implementing appropriate policies, systems and procedures to ensure they are complying with their obligations under the NER and the National Electricity Law (NEL). We expect prudent businesses to seek independent legal and other professional advice, as appropriate, to understand and to meet their compliance obligations.

2.3.2. Information and records that should be retained in relation to identifying and bidding WDRUs that will be, or are likely to be, spot price exposed

In the Issues Paper we indicated that the AER expects DRSPs to implement appropriate internal processes, procedures and training to enable them to undertake ongoing monitoring of whether applicable WDRUs will be, or are likely to be, spot price exposed, as well as to respond to likely or actual spot price exposure in a relevant trading interval by promptly providing to AEMO an available capacity of zero for the WDRU.

We also explained that we expect DRSPs to retain, and to make available to the AER upon request, documents and records demonstrating the establishment, implementation, and utilisation of such processes, procedures, and training.

In addition, we consider DRSPs should retain any information and data related to their awareness or knowledge that any qualifying load of a WDRU, aggregated or otherwise, will be, or is likely to be, spot price exposed for the duration of the WDRU's registration to provide WDR.

Further, we noted our expectation that DRSPs will undertake appropriate due diligence of spot price exposure in relation to their arrangements with DRSP customers. This includes records of contractual arrangements in relation to any qualifying load of a WDRU, practices or procedures established by the DRSP in relation to bidding any qualifying load with a spot price exposure arrangement, and all internal records and/or correspondence with electricity retailers (or where the DRSP is an aggregator, with a customer) that indicate a WDRU will be, or is likely to be, spot price exposed at any relevant time.

We did not receive any submissions responding to our questions about identifying and bidding WDRUs that will be, or are likely to be, spot price exposed. Accordingly, the Draft WDRP Guidelines are consistent with the expectations outlined in the Issues Paper insofar as they relate to spot price exposure.

2.4. Whether additional guidance or information from the AER may help DRSPs to understand their bidding obligations

We understand that stakeholders may be interested in specific guidance from the AER that may help them to understand DRSP obligations under clauses 3.8.2A(c) and (d) of the NER to provide an available capacity of zero for WDRUs that are baseline non-compliant, and

¹⁶ Available on [AEMO's website](#).

provide an available capacity of zero for WDRUs that will be, or are likely to be, spot price exposed.

Recognising the AER's interest in assisting businesses to understand the general nature of their obligations under the national energy laws, we seek to provide guidance in relation to aspects of these clauses where we consider it is beneficial to do so.

Given this is a new market mechanism, we noted in the Issues Paper that there is limited guidance and additional information the AER can provide at this time. However, we also noted that we anticipate updating the WDRP Guidelines as necessary to ensure they remain fit for purpose, and we may also consider publishing separate educational material to help market participants to meet their compliance obligations under the relevant legislation.

We did not receive any submissions from stakeholders that requested guidance in this regard. We have therefore not provided any further guidance on these matters in the Draft WDRP Guidelines.

However, we note this is an issue that may be appropriate for consideration in any future AER review of the WDRP Guidelines.