

# Wholesale Demand Response Participation Guidelines

## Final Decision

October 2021

© Commonwealth of Australia 2021

This work is copyright. In addition to any use permitted under the Copyright Act 1968 all material contained within this work is provided under a Creative Commons Attributions 3.0 Australia licence with the exception of:

- the Commonwealth Coat of Arms
- the ACCC and AER logos
- any illustration diagram, photograph or graphic over which the Australian Competition and Consumer Commission does not hold copyright but which may be part of or contained within this publication.

The details of the relevant licence conditions are available on the Creative Commons website as is the full legal code for the CC BY 3.0 AU licence.

Requests and inquiries concerning reproduction and rights should be addressed to the Director Corporate Communications:

Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

or [publishing.unit@acc.gov.au](mailto:publishing.unit@acc.gov.au)

Inquiries about this publication should be addressed to:

Australian Energy Regulator  
GPO Box 3131  
Canberra ACT 2601  
Tel: 1300 585 165

or [AERcompliance@aer.gov.au](mailto:AERcompliance@aer.gov.au)

AER Reference: 12775432.4

## Amendment Record

Version	Date	Pages
1	22 October 2021	13

# Contents

<b>1</b>	<b>Introduction.....</b>	<b>1</b>
1.1	Consultation undertaken .....	2
1.2	Process for Development.....	2
1.3	Relevant Rules .....	2
<b>2</b>	<b>AER positions on relevant issues .....</b>	<b>4</b>
2.1	Regulatory impacts and costs of the proposed information retention requirements.....	4
2.2	Information and records that should be retained by DRSPs as part of their participation in the WDRM .....	5
2.3	Whether additional guidance or information from the AER may help DRSPs to understand their bidding obligations.....	8

## Glossary

Shortened form	Extended form
<b>AEMC</b>	Australian Energy Market Commission
<b>AEMO</b>	Australian Energy Market Operator
<b>AER</b>	Australian Energy Regulator
<b>DRSP</b>	Demand Response Service Provider
<b>Final Determination</b>	AEMC, <i>Wholesale demand response mechanism</i> , Rule determination, 11 June 2020
<b>FRMP</b>	Financially Responsible Market Participant
<b>Issues Paper</b>	The AER's Notice of Consultation and Issues Paper published on 12 March 2021 in relation to the development of the WDRP Guidelines
<b>MW</b>	Megawatt
<b>NEL</b>	National Electricity Law
<b>NEM</b>	National Electricity Market
<b>NER</b>	National Electricity Rules
<b>ST PASA</b>	Short Term Projected Assessment of System Adequacy
<b>WDR</b>	Wholesale Demand Response
<b>WDRM</b>	Wholesale Demand Response Mechanism
<b>WDRP Guidelines</b>	Wholesale Demand Response Participation Guidelines
<b>WDRU</b>	Wholesale Demand Response Unit

# 1 Introduction

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).<sup>1</sup> 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.<sup>2</sup>

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

- *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*.

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

In accordance with our obligations under the *Rules consultation procedures*, the Final WDRP Guidelines set out our conclusions. This Final 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.

Stakeholders should note the Final 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 Final WDRP Guidelines do not set out a new or distinct approach to how the

<sup>1</sup> Available on the [AEMC website](#).

<sup>2</sup> See AEMC WDRM Final Determination, p. 183.

<sup>3</sup> See clause 3.8.2A(g) of the Final Rule.

AER will undertake its compliance and enforcement activities as they relate to DRSPs and the WDRM.

For more information about the AER's approach to monitoring compliance with and enforcing the national energy laws, including the future regulation of DRSPs, see the AER Compliance and Enforcement Policy.<sup>4</sup>

## 1.1 Consultation undertaken

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; we received six submissions.<sup>5</sup>

On 16 July 2021, we published a Draft Decision and Draft WDRP Guidelines setting out information DRSPs must keep regarding compliance with their obligations.<sup>6</sup> Consultation closed on 13 August 2021; we received no submissions.

## 1.2 Process for Development

In developing the Final WDRP Guidelines we have had regard to the:

- National Electricity Objective;<sup>7</sup>
- Determinations published by the AEMC in the development of the WDRM;<sup>8</sup>
- *wholesale demand response guidelines* published by AEMO;<sup>9</sup> and
- the views and issues put forward by stakeholders in response to the Issues Paper.

Part 2 of this document provides a summary of the AER's positions relating to a number of key issues of this consultation, as informed by the above.

## 1.3 Relevant Rules

Under clauses 3.8.2A(g) and 11.125.4(a) 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).

<sup>4</sup> Available on the [AER website](#).

<sup>5</sup> Available on the [AER website](#).

<sup>6</sup> Available on the [AER website](#).

<sup>7</sup> National Electricity Law, section 7.

<sup>8</sup> Available on the [AEMC website](#).

<sup>9</sup> Available on the [AEMO website](#).

Clause 3.8.2A relevantly 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
  - (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 AER positions on relevant issues

The AER's consultation process for the WDRP Guidelines has broadly related to 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
  - provide an available capacity of zero for WDRUs that will be, or are likely to be, spot price exposed.

We provide our position on each of these issues below.

### 2.1 Regulatory impacts and costs of the proposed information retention requirements

The WDRP Guidelines 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. This will ensure that the WDRM delivers the anticipated benefits to the market and enables the AER to carry out its regulatory responsibilities and support the integrity of the WDRM.

The AER expects that, in accordance with 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.

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 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 2.2 below.



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

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;
- short term Projected Assessment of System Adequacy (ST PASA) submissions; and
- the declaration of the maximum responsive component of each WDRU.

We also expect DRSPs to 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).

Further, 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 is 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.<sup>10</sup>

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 3.8.22A(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;<sup>11</sup>
- a WDRU bid into the market despite the fact that the *qualifying load* had already decided to respond to a market event;<sup>12</sup> and
- load shifting within a site.<sup>13</sup>

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

<sup>10</sup> AEMC WDRM Final Determination, p. 183.

<sup>11</sup> Ibid, p. 182.

<sup>12</sup> Ibid.

<sup>13</sup> AEMC WDRM Final Determination, p. 121.

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.

DRSPs should retain records relating to WDRU activity on an ongoing basis, rather than being sought or collated after a market event. This is because 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.

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. This is because 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.

In relation to aggregated loads, 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. We consider 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 discussed above, the AER has endeavoured to balance the obligations on the AER with not creating compliance obligations that pose an unnecessary barrier to DRSP participation in the market.

In order for the AER to monitor 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 are outlined in the WDRP Guidelines.

The AER considers a review of the WDRP Guidelines may be useful once the WDRM has been in effect for a period of time to ensure that the categories of documents or records that DRSPs are required to create and retain remain suitable. This may be appropriate after the AEMC completes its scheduled three-year review of the mechanism.<sup>14</sup> 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.

### **2.2.1 Information and records that should be retained in relation to identifying and bidding WDRUs that are baseline non-compliant**

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 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.

<sup>14</sup> As required by clause 3.10.7.

Similarly, we expect 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.

We have not included guidance related to an expected frequency of baseline testing in the 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 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 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,<sup>15</sup> 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.

### **2.2.2 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**

The AER expects DRSPs to implement appropriate internal processes, procedures and training to enable them to undertake ongoing monitoring of whether a WDRU will be, or is 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 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 expect that DRSPs will undertake appropriate due diligence of spot price exposure in relation to their arrangements with WDRUs. 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.

## **2.3 Whether additional guidance or information from the AER may help DRSPs to understand their bidding obligations**

As noted above, the WRDP Guidelines may include 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 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 will 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 note that there is limited guidance and additional information the AER can provide at this time. However, we anticipate updating the WRDP

<sup>15</sup> Available on [AEMO's website](#).

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.