



Wholesale Demand Response Participation Guidelines

Notice of Consultation and Issues Paper

March 2021

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Glossary

Shortened form	Extended form
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
FRMP	Financially Responsible Market Participant
MW	Megawatt
NEL	National Electricity Law
NEM	National Electricity Market
NER	National Electricity Rules
NMI	National Metering Identifier
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 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 notes 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 in respect of 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 Issues Paper seeks feedback from stakeholders as to what, if any, guidance may help them to better understand these bidding obligations. This will assist the AER to determine the scope of potential guidance that may be appropriate and useful to include in the WDRP Guidelines or some other form of compliance education material.

More broadly, this Issues Paper provides interested parties the opportunity to comment on and inform the development of the WDRP Guidelines. This is a new market mechanism, introducing a new participant category required to comply with new obligations, and we are seeking feedback from stakeholders that will help the AER put into place appropriate record keeping obligations and determine what guidance for these new participants is appropriate.

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.

The AER must make and publish the WDRP Guidelines 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 Issues Paper by the close of business 23 April 2021.

Interested parties should indicate in their submission if they consider a meeting with the AER is necessary or desirable in connection with the development of the WDRP Guidelines and, if so, the reasons why.

If, on the basis of submissions, the AER concludes it is necessary or desirable to hold any meetings, they will be convened before the AER publishes the draft WDRP Guidelines.

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

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

Alternatively, submissions may be sent to:

Jacqui Thorpe
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/or
- 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 Issues Paper, or about lodging submissions, to aer inquiry@aer.gov.au.

Next steps

Following the publication of this Notice of Consultation and Issues Paper, the AER will consider stakeholder feedback and submissions in response, and any stakeholder requests to hold a meeting.

Stakeholder submissions to the Issues Paper are due 23 April 2021.

We will then commence development of the Draft WDRP Guidelines, to be published by 16 July 2021. The closing date for submissions in response to the Draft WDRP Guidelines is scheduled for 13 August 2021. Please note these dates are indicative and subject to change.

The AER will publish the Final WDRP Guidelines on or before the effective date of the Wholesale Demand Response Mechanism, 24 October 2021.

Questions for consultation

Below is a full list of the questions posed in this Issues Paper. For convenience, the questions are also provided in the relevant sections of this paper.

Number	Question
1	Do stakeholders consider the regulatory impacts and costs of the proposed information retention requirements may impede participation in the WDRM? If so, please explain how and suggest alternatives to reduce these impacts.
2	What information and records should be retained by DRSPs in relation to submitting a <i>dispatch bid</i> for each trading day in accordance with clause 3.8.7B for the relevant WDRU?
3	What information and records should be retained by DRSPs in relation to their obligation under clause 3.8.2A(b) to ensure that the <i>available capacity</i> provided to AEMO is equal to or less than the relevant <i>maximum responsive component</i> ?
4	What information and records should be retained by DRSPs in relation to their obligation to provide an <i>available capacity</i> for a non-conforming WDRU in accordance with a maximum figure set by AEMO in a clause 3.8.23A(e) notice?
5	What information and records should be retained by DRSPs in relation to their obligations to establish and implement measures in accordance with <i>good electricity industry practice</i> to identify when WDRUs are <i>baseline non-compliant</i> , or will be, or are likely to be, <i>spot price exposed</i> in relation to a <i>trading interval</i> ?
6	What additional information and records should be retained by DRSPs in relation to their obligations to provide an <i>available capacity</i> of zero for WDRUs that are <i>baseline non-compliant</i> , or will be, or are likely to be, <i>spot price exposed</i> ?
7	What records should DRSPs be required to keep to substantiate that a WDRU's <i>baseline deviation</i> is the result of WDR activity that has occurred only in response to a <i>dispatch instruction</i> ? What specific examples of WDR conduct that is not genuinely additional do stakeholders consider may occur?
8	What records should DRSPs be required to keep to substantiate that there has been no <i>baseline deviation offset</i> of a WDRU in the period for which the WDRU is <i>dispatched</i> ? What specific examples of <i>baseline deviation offset</i> conduct do stakeholders consider may occur?
9	What other information, if any, should DRSPs be required to retain to substantiate their compliance with obligations under the NER to not make representations that are false or misleading?

Number	Question
10	Do stakeholders consider there are additional records or information that would assist the AER's assessment of DRSP compliance with their obligations under clauses 3.8.2A and 3.8.22A(a2) of the Final Rule?
11	Do stakeholders consider that the WDRP Guidelines should include guidance about DRSP obligations to provide an <i>available capacity</i> of zero for WDRUs that are <i>baseline non-compliant</i> , or will be, or are likely to be, <i>spot price exposed</i> under clauses 3.8.2A(c) and (d)? If so, which, if any, elements of the relevant clauses are not clear and/or where would this guidance be most beneficial?

1. Introduction

As noted above, the Final Rule introduced a Wholesale Demand Response Mechanism into the NEM. Under this rule, eligible customers will be able to sell demand response into the NEM from 24 October 2021. The AEMC's Final Determination outlines that there are different types of, and uses for, demand response including:

- wholesale (e.g., responding to changes in the wholesale price of electricity);
- emergency (e.g., participating in the Reliability and Emergency Reserve Trader mechanism to complement existing capacity in the NEM);
- network (e.g., using demand response to delay or remove the need for network augmentation); and
- ancillary services (e.g., changing load to manage power system frequency).⁴

The broad policy intention of this new mechanism is to facilitate additional *wholesale demand response* in the NEM to assist with the management of tight supply-demand conditions, and to provide more opportunities for large customers to participate in the wholesale market by offering demand reductions in competition with peaking generation. For a variety of reasons, the AEMC determined that the WDRM introduced under the Final Rule is not suited to small customer participation.⁵

The Final Rule introduced a new market participant category: *Demand Response Service Provider*, which can either be a specialist aggregator of WDR or an individual large customer that wish to participate directly in the NEM. Through registering as a DRSP itself, or by contracting with a DRSP to participate in the WDRM, a large electricity customer will have new options to provide demand side response into the NEM.

As the AEMC notes, DRSPs are the only class of market participant permitted to sell *wholesale demand response* through the WDRM.⁶ Registering as a DRSP is the first step for those seeking to participate in the WDRM.

There are several key principles related to eligibility and participation in the WDRM, namely:

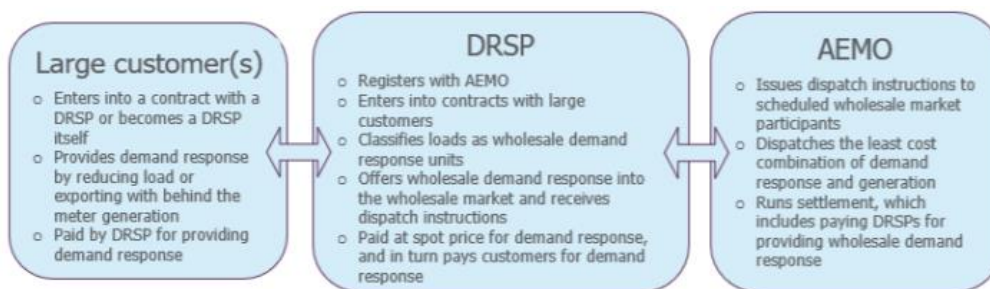
- units must be capable of both producing a *baseline* satisfying AEMO's *baseline methodology* and meeting the *baseline methodology metrics*, and must cease participating if their *baseline* no longer meets these preconditions;
- loads cannot participate in the WDRM during those periods when they will be, or are likely to be, exposed to the spot price; and
- the demand response provided by DRSPs must be real and additional (also referred to as 'additionality').

⁴ AEMC WDRM Final Determination, p. 46.

⁵ AEMC WDRM Final Determination, section 2.5 and Chapter 5.

⁶ AEMC WDRM Final Determination, p. 33.

For convenience, the basic process of the WDRM under the Final Rule is depicted below.⁷



As part of the implementation of the Final Rule, under clause 3.8.2A(g) the AER must develop WDRP Guidelines which:

- (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 Issues Paper considers the information and records that DRSPs must keep regarding compliance with their relevant obligations arising out of the Final Rule.

This Issues Paper poses several questions for stakeholders about DRSP compliance with the information and data retention requirements under the Final Rule. It also seeks feedback on whether the WDRP Guidelines should include guidance about the requirements on DRSPs that relate to bidding in respect of WDRUs that are *baseline non-compliant*, or WDRUs that will be, or are likely to be, *spot price exposed*, noting that the Final Rule precludes DRSPs from bidding to provide WDR for intervals when these conditions exist.⁸

Stakeholders should note that this Issues Paper is not intended to detail the AER's methods or approaches to regulatory compliance and enforcement as they relate to DRSPs. Nor will the WDRP Guidelines 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 Enforcement and Compliance Policy*.⁹

We note the AEMC has proposed, and the AER has agreed, to recommend that clauses 3.8.2A(a), (b), (c), (d), (e), (f) and (i) be classified as civil penalty provisions. Further, the AEMC has proposed, and the AER has agreed, to recommend that clause 3.8.2A(d) be classified a conduct provision for the purposes of the National Electricity Law (NEL).¹⁰

⁷ AEMC WDRM Final Determination, p. vi (Figure 1).

⁸ AEMC WDRM Final Determination, p. 181

⁹ Available on the [AER website](#).

¹⁰ See clause 6(2) of the National Electricity (South Australia) Regulations.

2. DRSP information retention requirements

Under clause 3.8.2A(i) of the Final Rule, DRSPs are required to retain the information specified in the WDRP Guidelines in the manner, and for the period, specified in the Guidelines.

The records that DRSPs must retain relate broadly to WDRU participation in central *dispatch*, including records relating to:

- WDR *dispatch bids* and declared *available capacity*;
- the provision of a particular *available capacity* of a non-conforming WDRU in compliance with an 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 to not bid into the market at these times; and
- the obligation that offers, bids and rebids must not be false or misleading.

DRSPs' maintenance of the information and records in accordance with the Guidelines will facilitate the AER's assessment of the relevant provisions.

The AER considers that this information must be maintained in a manner and form such that it is readily accessible upon AER request, and will not require the use of bespoke programs to access.

Stakeholders should note that NER clause 1.9 provides that, unless otherwise specified in the Rules, all records and documents prepared for or in connection with the Rules must be retained for a period of at least 7 years. We propose the 7 years retention period is appropriate for records and documents DRSPs must retain pursuant to the WDRP Guidelines and Final Rule clause 3.8.2A(i).

We acknowledge that the information retention requirements which will be established in the WDRP Guidelines will impose some compliance costs on DRSPs. We have endeavoured to balance the obligations on the AER – namely to establish requirements to enable the AER to effectively monitor compliance with the obligations and thereby provide confidence around the integrity of the WDR mechanism – with not creating onerous compliance obligations or unnecessary barriers to DRSP participation in the market. We also note our understanding that most information to be kept by DRSPs under the WDRP Guidelines will be gathered and retained by DRSPs as part of their usual course of business.

We seek feedback from stakeholders as to the regulatory impacts and anticipated costs of the proposed information retention requirements, particularly where stakeholders consider these impacts may impede their entry and participation in the WDRM.

Question 1

Do stakeholders consider the regulatory impacts and costs of the proposed information retention requirements may impede participation in the WDRM? If so, please explain how and suggest alternatives to reduce these impacts.

2.1. Obligations to retain records relating to wholesale demand response dispatch bids and declared available capacity

Clause 3.8.2A(a) of the Final Rule provides that:

A Demand Response Service Provider must submit a dispatch bid in respect of its wholesale demand response unit or, if aggregated, the aggregated wholesale demand response units, for each trading day in accordance with clause 3.8.7B.

We note the requirements under Final Rule clause 3.8.7B relate to *wholesale demand response dispatch bids*, and require all *dispatch bids* (which may contain up to 10 *price bands*) to specify an incremental megawatt (MW) amount for each *price band* specified in the *dispatch bid*, an up *ramp rate* and a down *ramp rate*, as well as a price for each *price band*.

Dispatch bids under this clause are required to represent the sum of the MW quantities specified in each *price band* in each *trading interval* and must not exceed the *maximum responsive component* of the WDRU.

As the *dispatch bid* under this clause may specify the daily *wholesale demand response* available for WDRUs that are *wholesale demand response constrained*, the AER considers DRSPs should retain all information and records evidencing or detailing how the relevant value in the *dispatch bid* is derived.

Clause 3.8.2A(b) of the Final Rule provides:

When a Demand Response Service Provider provides to AEMO for the purposes of the Rules the available capacity of a wholesale demand response unit or aggregated wholesale demand response units, the Demand Response Service Provider must ensure that:

- (1) the available capacity it provides to AEMO for a wholesale demand response unit that is not aggregated is equal to or less than the maximum responsive component of the wholesale demand response unit; and*
- (2) the available capacity it provides to AEMO for aggregated wholesale demand response units is equal to or less than the aggregate maximum responsive component of the aggregated wholesale demand response units.*

Participants are required to provide AEMO with *available capacity* pursuant to:

- clause 3.7.3(e)(1) (*short term Projected Assessment of System Adequacy (ST PASA) inputs*);¹¹

¹¹ Under the Final Rule, clause 3.7.3(e) states: The following *short term PASA* inputs must be submitted by each relevant *Scheduled Generator* and *Market Participant* in accordance with the *timetable* and must represent the *Scheduled Generator's* or *Market Participant's* current intentions and best estimates: (1) *available capacity* of each *scheduled generating unit*,

- clause 3.8.4 (notification of scheduled capacity);¹² and
- clause 3.8.7B (*wholesale demand response dispatch bids*, as outlined above).

We note that DRSPs, when applying to AEMO for approval to classify a *qualifying load* as a *wholesale demand response unit*, must, among other things, specify the proposed *maximum responsive component* of the *wholesale demand response unit*.¹³

Under Final Rule clause 3.8.23A(c)(2), where AEMO is of the opinion that a modification of the *maximum responsive component* of a non-conforming WDRU is necessary or desirable, AEMO must request that the DRSP submit a modified *maximum responsive component* figure to satisfy AEMO that a realistic real time *dispatch* schedule can be carried out. The AER expects DRSPs to retain all records and correspondence related to such a request from AEMO, including any internal documents relating to the modification of the *maximum responsive component*, and any DRSP responses to AEMO's request.

Market participants, including DRSPs, are also required to provide to AEMO bid and offer validation data relevant to their *scheduled loads*, *scheduled network services*, *wholesale demand response units* and *generating units* in accordance with schedule 3.1 relating to bid and offer validation data. Bid and offer validation data are the standard data requirements for verification and compilation of *dispatch bids* and dispatch offers on the *trading day* schedule.

Under schedule 3.1, *wholesale demand response unit* data includes:

- *wholesale demand response unit* name;
- *dispatchable unit identifier*;
- *maximum responsive component* of the *wholesale demand response unit* (MW); and
- maximum *ramp rate* (MW/minute).

The AER expects DRSPs to retain, and to make available to the AER upon request, all relevant records and information in relation to each *wholesale demand response dispatch bid*, and provision of declared *available capacity* to AEMO for each WDRU, aggregated or otherwise.

This includes records that demonstrate the reasonable basis for its bids and rebids in relation to *ST PASA* submissions, *dispatch bids* and rebids, as well as all records and information relating to the declaration of the *maximum responsive component* of each WDRU (e.g., registration documents, bid and offer validation data nominated to AEMO under schedule 3.1, and any record of amendments to the *maximum responsive component* of the relevant WDRU).

wholesale demand response unit, *scheduled load* or *scheduled network service* for each 30-minute period under expected market conditions.

¹² All *Scheduled Generators* and *Market Participants* with *scheduled generating units*, *wholesale demand response units*, *scheduled network services* and/or *scheduled loads* must inform AEMO of their *available capacity* as follows in accordance with the *timetable*: (a) *Scheduled Generators* and *Market Participants* must notify AEMO of the *available capacity* of each *scheduled generating unit*, *wholesale demand response unit*, *scheduled network service* and/or *scheduled load* for each *trading interval* of the *trading day* ... (f) for *wholesale demand response units*, two days ahead of each *trading day*: (1) a MW capacity profile that (subject to clauses 3.8.2A(b), (c), (d) and (e)) specifies the *wholesale demand response* available for *dispatch* for each of the 288 *trading intervals* in the trading day.

¹³ See Final Rule clause 2.3.6(b)(2).

Question 2

What information and records should be retained by DRSPs in relation to submitting a *dispatch bid* for each trading day in accordance with clause 3.8.7B for the relevant WDRU?

Question 3

What information and records should be retained by DRSPs in relation to their obligation under clause 3.8.2A(b) to ensure that the *available capacity* provided to AEMO is equal to or less than the relevant *maximum responsive component*?

2.2. Obligations to retain records of compliance with AEMO notices relating to non-conforming wholesale demand response units

Clause 3.8.2A(e) of the Final Rule provides that:

If AEMO has given a notice under clause 3.8.23A(e) in relation to a *wholesale demand response unit* or aggregated *wholesale demand response units*, from the time the notice takes effect and for so long as the notice remains in place, the *Demand Response Service Provider* must provide to AEMO an *available capacity* for the *wholesale demand response unit* or aggregated *wholesale demand response units* in accordance with the notice.

Any notice issued by AEMO under Final Rule clause 3.8.23A(e) remains in place until:

- the *wholesale demand response unit* ceases to be non-conforming; or
- AEMO varies the notice by giving a further notice under clause 3.8.23A(e).¹⁴

The AER expects DRSPs to retain, and to make available to the AER upon request, all records and information relating to DRSP actions to comply with any AEMO notice to limit the *available capacity* of a non-conforming WDRU. DRSPs should also retain each notice issued by AEMO under Final Rule clause 3.8.23A(e), including any variations issued under clause 3.8.23A(f)(b).

Under Final Rule clause 3.8.23A(c)(1), where AEMO identifies a WDRU as non-conforming with a *dispatch instruction*, AEMO must advise the DRSP as such and request and log a reason for the non-compliance. The AER expects DRSPs to retain all records and correspondence related to 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.¹⁵

¹⁴ See Final Rule clause 3.8.23A(f).

¹⁵ We note DRSP obligations to maintain such records and correspondence may arise out of other relevant requirements in the Final Rule, such as clauses 3.8.2A and 3.8.22A(a2).

Question 4

What information and records should be retained by DRSPs in relation to their obligation to provide an *available capacity* for a non-conforming WDRU in accordance with a maximum figure set by AEMO in a clause 3.8.23A(e) notice?

2.3. Obligations relating to baseline non-compliance, spot price exposure, and additionality

This section is set out in two segments – an overview of key concepts around *baseline* non-compliance, spot price exposure and additionality, and a discussion of the record keeping requirements associated with the relevant provisions.

2.3.1. Overview of key concepts

As outlined above, the key principles related to eligibility and participation in the WDRM are:

- units must be capable of both producing a *baseline* satisfying AEMO's *baseline methodology* and meeting the *baseline methodology metrics*, and must cease participating if their *baseline* no longer meets these preconditions;
- units cannot participate in the WDRM during those periods when they will be, or are likely to be, exposed to the spot price; and
- the demand response provided by DRSPs must be real and additional (also referred to as 'additionality').

The AEMC introduced a range of obligations, including under Final Rule clauses 3.8.2A(c), (d) and (f), and 3.8.22A(a2) to ensure the integrity of the WDRM. Before turning to the record keeping requirements associated with those obligations, it is convenient to provide some background and discussion about *baseline* non-compliance and *spot price exposure* and additionality.

Baseline non-compliance

A *baseline* is the estimate of what consumption would have otherwise occurred were it not for the provision of demand response. A *baseline* is necessary to allow demand response providers to sell demand response directly into the wholesale market because the quantity of demand response sold and paid for is determined by the difference between the *baseline* and the actual level of consumption.¹⁶

Under the Final Rule, AEMO must:

- determine one or more initial *baseline* methodologies;¹⁷
- prepare *baseline methodology metrics* to assess whether a particular *baseline methodology* can sufficiently and accurately predict a particular load's consumption;¹⁸

¹⁶ See AEMC WDRM Final Determination, p. 162.

¹⁷ Final Rule clause 3.10.3(a).

¹⁸ Final Rule clause 3.10.2(a).

- establish arrangements for regular and systematic testing of demand response loads against the approved *baseline* methodologies to determine whether the loads remain compliant with the metrics;¹⁹ and
- prepare *Wholesale Demand Response Guidelines*, which will cover, amongst other things:²⁰
 - the process for DRSPs to apply to AEMO to have a *baseline methodology* applied to a WDRU; and
 - any other information or requirements relating to the supply of *wholesale demand response* that AEMO considers appropriate.

In order to register to provide *wholesale demand response*, DRSPs must demonstrate compliance with the requirements set out in AEMO's guidelines in relation to *baseline* methodologies, and must also be able to demonstrate compliance with AEMO's *baseline methodology* on an ongoing basis.

A WDRU is *baseline non-compliant* if it does not meet the *baseline compliance standard*. As explored further below, DRSPs must not bid as available any WDRU that is *baseline non-compliant*.

We note that *baseline non-compliant* and *baseline compliance standard* are defined terms under the NER and encourage interested parties to consult these definitions when seeking to understand their obligations,²¹ as well as when providing feedback on the nature of these obligations as part of this consultation process.

Spot price exposure

The issue of *spot price exposed* loads was examined in the AEMC Final Determination, with the AEMC noting some stakeholders considered that retailers could be exposed to significant risk if *spot price exposed* customers participated in the WDRM. This is because affected retailers will be charged in the wholesale market for the *baseline* level of consumption, but the *wholesale demand response reimbursement rate*, which is intended to reflect the wholesale price component of an average retail rate, does not extend to retailer liability under a spot price pass through contract.

That is, if *spot price exposed* customers were to participate in the WDRM, it would expose their retailers to the spot price and allow the customer to 'double dip'. This is because the customer can avoid or reduce their exposure to the spot price (that would have been passed through by the retailer), as well as receive a payment for the demand response provided.²²

¹⁹ Final Rule clause 3.10.2(d).

²⁰ Clause 3.10.1(a)

²¹ See Final Rule, clause 3.10.4(b): A *wholesale demand response unit* of a *Demand Response Service Provider* is *baseline non-compliant* if it does not satisfy the *baseline compliance standard* in accordance with cl.3.10.4(a) and it continues to be *baseline non-compliant* until the *Demand Response Service Provider* demonstrates that the *wholesale demand response unit* satisfies the *baseline compliance standard* in accordance with cl.3.10.4B(a). Final Rule clause 3.10.4(a) states that: The *baseline compliance standard* is satisfied by a *wholesale demand response unit* if the approved *baseline methodology*, when applied to the *wholesale demand response unit* using the approved *baseline settings*, produces a *baseline* that satisfies the *baseline methodology metrics*.

²² See AEMC WDRM Final Determination, p. 181.

Consequently, the Final Rule places an obligation on DRSPs to submit zero *available capacity* in the *dispatch bid* for a *wholesale demand response unit* for any *trading interval* in which the relevant unit is *spot price exposed*.

The AEMC explained that a *wholesale demand response unit* is considered to be exposed to the spot price in a *trading interval* if the purchase price for electricity in the contract between that customer and the relevant *financially responsible Market Participant* (FRMP) is equal to, or varies by reference to, the *spot price* in that *trading interval*.

This means that if, in a specific *trading interval*, the price in the retail arrangement between the customer whose load is qualified to be part of the WDRU and the FRMP has some form of spot price exposure, that customer cannot provide *wholesale demand response* through the mechanism.

This includes if:

- the spot price exposure only applies to a portion of the relevant load; or
- only a portion of the spot price is to be passed through.

Moreover, the AEMC noted that demand response provided by *spot price exposed* customers would likely not be considered ‘additional’ because spot price exposure provides customers with a strong incentive to respond to wholesale prices.²³ In other words, *spot price exposed* loads in a relevant interval may already be responsive to wholesale prices and are therefore not likely to satisfy the key principle to offer genuinely additional demand response.

The AEMC considered that keeping *spot price exposed* loads out of the WDRM can be achieved simply and directly if DRSPs exclude demand response in *spot price exposed* intervals and manage these issues through their commercial arrangements directly with participating customers. The AEMC also noted this issue may alternatively be remedied if retailers make spot price pass through offers conditional on not participating in the WDRM.

We note *spot price exposed* is a defined term under the Final Rule, and encourage stakeholders to consult this definition when considering how DRSPs will meet their relevant obligations.²⁴

Additionality

As noted above, it is fundamental to the design of the WDRM that DRSPs only offer *wholesale demand response* when it is additional to the activities that the relevant load was already going to undertake (the ‘additionality’ principle). As the AEMC indicated in its Final Determination, the policy intention behind the additionality principle is to prevent demand responders from being paid for demand reductions that would have occurred anyway.²⁵ To pay demand

²³ AEMC WDRM Final Determination, p. 181.

²⁴ *Spot price exposed* is defined under the NER as: A *wholesale demand response unit* is *spot price exposed* in relation to a *trading interval* if: (a) the price: (1) for electricity consumed in that *trading interval* at any *connection point* for the *wholesale demand response unit* (or that would have been consumed but for a reduction in demand); and (2) payable by a *retail customer* to the *financially responsible Market Participant* for the *connection point* or its *related body corporate*, is equal to, or varies by reference to, the *spot price* in that *trading interval*; or (b) the price: (1) for or in respect of electricity supplied to the *transmission or distribution network* in that *trading interval* at any *connection point* for the *wholesale demand response unit*; and (2) payable by the *financially responsible Market Participant* for the *connection point* or its *related body corporate* to a *retail customer*, is equal to, or varies by reference to, the *spot price* in that *trading interval*.

²⁵ AEMC WDRM Final Determination, p. 182.

responders in these circumstances, the AEMC notes, would increase costs in the wholesale market without procuring any genuinely additional WDR.²⁶

Under the Final Rule, when a DRSP submits a bid to provide demand response, the demand response offered must be additional in the interval for which it is bidding. For example, a customer decision to reduce demand a day before dispatch, which would occur irrespective of whether the load was scheduled by AEMO to reduce consumption, should not be bid into the wholesale market because this would not be genuinely additional demand response.

Providing further examples of demand response not considered additional, the AEMC noted the provisions in the Final Rule requiring additionality should prevent a payment being made to:

- a factory that had already decided to shut down for maintenance; and
- a customer if that customer had already decided to respond to a peak network event and a payment from the wholesale market would not elicit additional wholesale demand response.

Importantly, the Final Rule also prevents DRSPs from offering WDR in circumstances where the response would be directly offset by an increase in consumption elsewhere simultaneously.²⁷ This restriction is intended to prevent load shifting, in which a demand reduction is provided at one National Metering Identifier (NMI) and the equivalent load is then shifted to another NMI during the same interval.

The AEMC considered this behaviour would allow DRSPs to be credited with providing WDR that did not actually occur, and therefore is not additional, and consequently is not an allowable provision of demand response.

2.3.2. Record keeping requirements for the relevant obligations

Establishment and implementation of measures in accordance with *good electricity industry practice*

To address inherent challenges associated with baselines that are centrally determined and administered, the AEMC's Final Determination notes that DRSPs must use *good electricity industry practice* to identify WDRUs that do not satisfy the *baseline methodology metrics* and units which will be, or are likely to be, *spot price exposed*.²⁸ This obligation is intended to provide certainty to the market that such units will be identified and not bid as available.

As outlined in our *Generator performance standards information booklet*,²⁹ the AER considers the key components of *good electricity industry practice* to 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;

²⁶ AEMC WDRM Final Determination, p. 182.

²⁷ See paragraph (e) of the definition of “*wholesale demand response*” and the definition of “*baseline deviation offset*” in Chapter 10 of the Final Rule.

²⁸ See AEMC WDRM Final Determination, p. 173.

²⁹ Available on the [AER website](#).

- 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.

In these respects, Final Rule clause 3.8.2A(f) provides that:

Without limiting clause 3.8.2A(c) or (d), a *Demand Response Service Provider* must establish and implement measures in accordance with *good electricity industry practice* to identify:

- (1) a *wholesale demand response unit* of the *Demand Response Service Provider* that is *baseline non-compliant*, and
- (2) when a *wholesale demand response unit* of the *Demand Response Service Provider* will be, or is likely to be, *spot price exposed* in relation to a *trading interval*.

In practice, this means DRSPs must be proactive in establishing appropriate business processes, procedures, and training to anticipate and to identify when a WDRU, or an aggregated WDRU, may be *baseline non-compliant* or will be, or is likely to be, *spot price exposed* in relation to a *trading interval*.

For example, it is expected that prudent DRSPs would implement appropriate internal processes, procedures, and training to monitor on an ongoing basis the performance of applicable WDRUs against the relevant *baseline methodology* and *baseline settings* and act swiftly in response to identified non-compliance. It would not be sufficient, nor *good electricity industry practice*, for DRSPs to solely rely on AEMO notifications regarding *baseline non-compliance*.

It is also expected that prudent DRSPs engaged in retail contractual arrangements involving any element of spot price exposure would implement appropriate internal processes, procedures, and training to monitor on an ongoing basis whether or not a WDRU will be, or is likely to be, *spot priced exposed* in relation to a particular *trading interval*.

While we note that the AEMC has recommended Final Rule clause 3.8.2A(d) be classified as a conduct provision such that retailers who suffer loss or damage as a result of DRSPs breaching this clause can seek to recover loss or damage, it would not be sufficient, nor *good electricity industry practice*, for DRSPs to rely on any external party to identify that a WDRU was *spot price exposed* during a relevant *trading interval*.

Consistent with *good electricity industry practice*, the AER expects DRSPs will also put in place appropriate processes, procedures, and training to promptly notify AEMO of any incidence of *baseline non-compliance*³⁰ or non-compliance with the spot price exposure

³⁰ In accordance with Final Rule clause 3.10.2(i).

restrictions. We emphasise here the importance of having appropriately trained and resourced staff to reduce the risks of any non-compliance with the Rules, as well as enabling DRSPs to promptly and effectively respond to any identified non-compliance.

The AER also anticipates a prudent DRSP, acting in accordance with *good electricity industry practice*, would have processes, procedures, and training in place to document their compliance with AEMO's Wholesale Demand Response Guidelines.

We note *good electricity industry practice* is a defined term under the NER, and encourage stakeholders to consult this definition when considering how DRSPs should meet their obligations.³¹

In relation to information retention, the AER expects DRSPs to retain, and to make available to the AER upon request, all documents and records demonstrating their establishment and implementation of measures in accordance with this clause.

DRSP bidding obligations in case of baseline non-compliance

To meet its regulatory responsibilities in this new role, the AER will monitor DRSP bidding behaviour. Specifically, the AER will monitor and assess DRSP compliance with their obligations under the NER not to offer demand response that would have otherwise occurred (i.e., demand response that was not genuinely additional).

Clause 3.8.2A(c) of the Final Rule provides that:

(c) If a *Demand Response Service Provider* is aware (whether by reason of the *Demand Response Service Provider's* own knowledge or a notification from AEMO) at the time the *Demand Response Service Provider* provides *available capacity* of a *wholesale demand response unit* or aggregated *wholesale demand response units* to AEMO for the purposes of the *Rules* that:

(1) the *wholesale demand response unit* is *baseline non-compliant*; or

(2) in relation to aggregated *wholesale demand response units*, any of the *wholesale demand response units* in the aggregated *wholesale demand response units* is *baseline non-compliant*,

the *Demand Response Service Provider* must provide to AEMO an *available capacity* of zero for the *wholesale demand response unit* or aggregated *wholesale demand response units*.

As outlined above in relation to *good electricity industry practice*, DRSPs should proactively establish appropriate business processes, procedures, and training to anticipate and to identify when a WDRU, or an aggregated WDRU, may be *baseline non-compliant*. If a WDRU, aggregated or otherwise, is *baseline non-compliant*, DRSPs must provide to AEMO an *available capacity* of zero for the WDRU, or relevant aggregation, until it ceases to be *baseline non-compliant*.

³¹ *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*."

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

The AER expects 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, including those established by the DRSP in relation to bidding any WDRU that has been identified as *baseline non-compliant*.

We also consider DRSPs should retain records relating to *baseline compliance testing*, whether undertaken routinely or in response to an AEMO communication regarding *baseline non-compliance*. We further expect DRSPs to retain records of any correspondence to or from AEMO in relation to a WDRU not meeting the *baseline compliance standard*.

DRSP bidding obligations in case of spot price exposure

Clause 3.8.2A(d) of the Final Rule provides that:

If, in relation to a *trading interval*:

- (1) a *wholesale demand response unit* will be, or is likely to be, *spot price exposed*; or
- (2) in relation to aggregated *wholesale demand response units*, any of the *wholesale demand response units* in the aggregated *wholesale demand response units* will be, or is likely to be, *spot price exposed*,

the *Demand Response Service Provider* must provide to AEMO an *available capacity* of zero for the *wholesale demand response unit* or aggregated *wholesale demand response units* in relation to the *trading interval*.

As outlined above in relation to *good electricity industry practice*, DRSPs should proactively establish appropriate business processes and procedures to anticipate and to identify if, in relation to a *trading interval*, a WDRU, or an aggregated WDRU, will be, or is likely to be, *spot price exposed*. Where a WDRU will be, or is likely to be, *spot price exposed* in relation to a *trading interval*, DRSPs must provide to AEMO an *available capacity* of zero for the relevant WDRU, or relevant aggregation, in relation to that *trading interval*.

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

The AER expects 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, 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. The AER also expects DRSPs to undertake appropriate due diligence related to spot price exposure in relation to their arrangements with large 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 retailers (or where the DRSP is an aggregator, with a customer) that indicates a WDRU will be, or is likely to be, *spot price exposed* at any relevant time.

Question 5

What information and records should be retained by DRSPs in relation to their obligations to establish and implement measures in accordance with *good electricity industry practice* to identify when WDRUs are *baseline non-compliant*, or will be, or are likely to be, *spot price exposed* in relation to a *trading interval*?

Question 6

What additional information and records should be retained by DRSPs in relation to their obligations to provide an *available capacity* of zero for WDRUs that are *baseline non-compliant*, or will be, or are likely to be, *spot price exposed*?

Offers, bids and rebids must not be false or misleading

As noted in the AEMC's Final Determination, when DRSPs make a *dispatch bid* this bid represents to other *Market Participants* in *pre-dispatch* that the WDR offered will be the result of specific activity of the DRSP that it would not otherwise undertake (i.e., the demand response is genuinely additional).³²

Clause 3.8.22A(a2) of the Final Rule provides:

For the purposes of paragraph (a), the making of a *wholesale demand response dispatch bid* by a *Demand Response Service Provider* is deemed to represent to other *Market Participants* through the *pre-dispatch schedules published by AEMO* that:

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

Similar to existing obligations on generators, the AEMC noted in the Final Determination that a DRSP *dispatch bid* would likely be considered false or misleading if the DRSP does not have

³² AEMC WDRM Final Determination, p. 183.

a reasonable basis to make that representation or a genuine intention to honour that representation.³³

The AEMC has provided the following examples of conduct that would not be considered additional:

- A WDRU being bid into the market despite the fact that the factory behind the *qualifying load* had previously decided to shut down for maintenance,³⁴ and
- A WDRU being bid into the market despite the fact that the *qualifying load* had previously decided to respond to a peak network event.³⁵

Baseline deviation and wholesale demand response activity

Under the Final Rule, a *baseline deviation* is defined as:³⁶

For a *wholesale demand response unit* in a period, a deviation between the amount of electrical energy flowing at the *connection point* for the *wholesale demand response unit* in the period and the *baseline* of the *wholesale demand response unit* for the period.

Relevantly, *wholesale demand response activity* is defined as:³⁷

An activity in relation to a *wholesale demand response unit* for which both of the following criteria are satisfied:

- (a) the activity is undertaken for the purpose of achieving a *baseline deviation* in a period in accordance with a *dispatch instruction* relating to the *wholesale demand response unit* and period; and
- (b) the activity would not be undertaken but for the *dispatch instruction*.

As the AEMC notes in the Final Determination, any *baseline deviation* in excess of the cap set by reference to the relevant *maximum responsive component* of the WDRU is taken not to satisfy the requirement for WDR to be a *baseline deviation* that occurs in response to a *dispatch instruction*.³⁸ Consequently, as outlined in the Final Determination, settlement of a WDRU or aggregated WDRUs will be capped by the relevant *maximum responsive component* of the WDRU or aggregated WDRUs.³⁹

Baseline deviation offset

Under the Final Rule, a *baseline deviation offset* is defined as:⁴⁰

In relation to *baseline deviation* by a *dispatched wholesale demand response unit* in the period for which it is *dispatched*, electrical energy flowing at another *connection point* in the period that directly or indirectly offsets any part of the *baseline deviation* of the

³³ AEMC WDRM Final Determination, p. 183.

³⁴ Ibid, p. 182.

³⁵ Ibid.

³⁶ See Final Rule Chapter 10.

³⁷ Ibid.

³⁸ AEMC WDRM Final Determination, p. 144.

³⁹ Ibid.

⁴⁰ See Final Rule Chapter 10.

wholesale demand response unit in that period including where the offset occurs due to or by reason of:

- (a) the relevant *wholesale demand response activity* or an activity connected with or undertaken in conjunction with the *wholesale demand response activity*; or
- (b) the configuration of the *wholesale demand response unit* or any *facility* associated with the *wholesale demand response unit*.

Consequently, as discussed above in relation to the principle of additionality, clause 3.8.22A(a2) 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. The AEMC has provided the example of load shifting within a site to illustrate behaviour encompassing a *baseline deviation offset*.⁴¹

The AER expects DRSPs to retain, and to make available to the AER upon request, all documents and records relating to fulfilling the obligation that all offers, bids and rebids must not be false or misleading, as well as any records or correspondence to or from AEMO in this respect.

In relation to *wholesale demand response activity*, this could include *plant* production schedules or maintenance schedules which demonstrate DRSPs' intentions and expectations in relation to the use of a load by a WDRU. In relation to *baseline deviation offset*, this could include records of all loads contained within a site, or other related loads that could replace or offset the load behind the WDRU.

Question 7

What records should DRSPs be required to keep to substantiate that a WDRU's *baseline deviation* is the result of WDR activity that has occurred only in response to a *dispatch instruction*? What specific examples of WDR conduct that is not genuinely additional do stakeholders consider may occur?

Question 8

What records should DRSPs be required to keep to substantiate that there has been no *baseline deviation offset* of a WDRU in the period for which the WDRU is *dispatched*? What specific examples of *baseline deviation offset* conduct do stakeholders consider may occur?

Question 9

What other information, if any, should DRSPs be required to retain to substantiate their compliance with obligations under the NER to not make representations that are false or misleading?

⁴¹ AEMC WDRM Final Determination, p. 121.

Question 10

Do stakeholders consider there are additional records or information that would assist the AER's assessment of DRSP compliance with their obligations under clauses 3.8.2A and 3.8.22A(a2) of the Final Rule?

3. Guidance about baseline non-compliance bidding obligations and spot price exposure

Under clause 3.8.2A(g)(2) of the Final Rule, the AER may include guidance in the WDRP Guidelines about the requirements on DRSPs under clauses 3.8.2A(c) and (d), which address DRSP obligations relating to bidding when a WDRU is *baseline non-compliant*, or will be, or is likely to be, *spot price exposed*.

We understand that stakeholders may be interested in specific guidance on these new obligations. 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, there is limited guidance and additional information the AER can provide at this time. As the market develops, we anticipate updating the WDRP Guidelines as necessary to ensure they remain fit for purpose, and may consider publishing educational material to help market participants to meet their compliance obligations under the relevant legislation.

We seek specific stakeholder feedback as to whether additional guidance or information from the AER may be necessary to understand the obligations under clauses 3.8.2A(c) and (d). This feedback will assist the AER to determine the scope of potential guidance that may be appropriate and useful to include in the WDRP Guidelines or some other form of compliance education material.

We note this does not replace the need for businesses to seek independent legal advice as they consider appropriate in order to understand their compliance obligations. We also expect businesses to have comprehensive and effective compliance programs and systems in place to manage their obligations.

Question 11

Do stakeholders consider that the WDRP Guidelines should include guidance about DRSP obligations to provide an *available capacity* of zero for WDRUs that are *baseline non-compliant*, or will be, or are likely to be, *spot price exposed* under clauses 3.8.2A(c) and (d)? If so, which, if any, elements of the relevant clauses are not clear and/or where would this guidance be most beneficial?