



Government of Western Australia
Energy Policy WA

TDOWG Meeting 46

28 February 2023

Working together for a
brighter energy future.

TDOWG Agenda

9.30am **Introduction**

9.35am **Market Power Mitigation Exposure Draft #2**

10.20am **Compliance and Enforcement Exposure Draft**

10.50am **State Electricity Objective – Energy and Governance Legislation**

Ground rules

- Please place your microphone on mute, unless you are asking a question or making a comment.
- Please keep questions relevant to the agenda item being discussed.
- If there is no break in discussion and you would like to say something, you can 'raise your hand' by typing 'question' or 'comment' in the meeting chat.
- Questions and comments can also be emailed to energymarkets@dmirs.wa.gov.au after the meeting.
- If you are having connection/bandwidth issues, you may want to disable the incoming and/or outgoing video.

Market Power Mitigation – Exposure Draft #2

Dora Guzeleva

Monitoring Market Effectiveness

- The efficiency and effectiveness of the Benchmark Reserve Capacity Price methodology will now be monitored by the Coordinator along with the methodologies for setting the Market Price Limits
 - The Coordinator must also monitor the appropriateness of the parameters used to determine a Material Portfolio and Material Constrained Portfolio
- 2.16.13B. In carrying out its responsibilities under clause 2.16.13A, the Coordinator must also monitor:
- (a) the effectiveness of the compliance monitoring and enforcement measures in the WEM Rules and Regulations; including but not limited to:
 - i. the effectiveness of the Economic Regulation Authority's surveillance activities under sections 2.16A to 2.16D; and
 - ii. the appropriateness of the parameters used to determine a Material Portfolio and Material Constrained Portfolio under clauses 2.16C.1 and 2.16C.2;
 - (b) the effectiveness of AEMO in carrying out its functions under the Regulations, the WEM Rules and WEM Procedures; ~~and~~
 - (c) the effectiveness of Network Operators in carrying out their functions under the WEM Rules and WEM Procedures; and
 - (d) the efficiency and effectiveness of the methodologies for determining the Market Price Limits and the Benchmark Reserve Capacity Price.

General Trading Obligations

- Clause 2.16A.1 has been amended to remove “with market power”.

2.16A.1. A Market Participant with market power must offer prices in each of its STEM Submissions and Real-Time Market Submissions that reflect only the costs that a Market Participant without market power would include in forming profit-maximising price offers in a STEM Submission or Real-Time Market Submission.

- New clause 2.16A.3 will require the Economic Regulation Authority to consider the extent to which a Market Participant held market power when investigating a breach of 2.16A.1.

2.16A.3. The Economic Regulation Authority must not determine that a Market Participant has engaged in conduct prohibited by clause 2.16A.1 unless the Economic Regulation Authority has first determined that the Market Participant had market power at the time of offering the relevant prices in its STEM Submission or Real-Time Market Submission.

Portfolio Assessment

- The Economic Regulation Authority must identify each Portfolio operating in the market by 1 April and 1 October of each year, rather than after AEMO has conducted Reserve Capacity Testing, as previously proposed.

2.16B Portfolio Assessment

2.16B.1. The Economic Regulation Authority must, in accordance with the WEM Procedure referred to in clause 2.16D.15:

(a) by 1 April and 1 October each year, identify each Portfolio operating in the Wholesale Electricity Market in accordance with the following requirements:

- i. each Scheduled Facility, Semi-Scheduled Facility and Non-Scheduled Facility must be allocated to one and only one Portfolio;
- ii. Registered Facilities which are registered to the same Market Participant must be allocated to the same Portfolio;
- iii. Registered Facilities which are registered to Market Participants that are associated entities (as that expression is defined in the Corporations Act) must be allocated to the same Portfolio; and
- iv. a Registered Facility must not be allocated to a Portfolio containing another Registered Facility unless it is necessary to satisfy the requirements in clauses 2.16B.1(a)(ii) or 2.16B.1(a)(iii);

Material Portfolios

- Clause 2.16C.1 has been amended to refer to the maximum sent out capacity of a Facility, rather than its Declared Sent Out Capacity.

2.16C.1. The Economic Regulation Authority must, in accordance with the WEM Procedure referred to in clause 2.16D.15:

(a) within 10 Business Days of identifying each Portfolio p under clause 2.16B.1(a), calculate Portfolio p's percentage share of the total maximum sent out capacity of all Registered Facilities assigned to a Portfolio as follows:

$$\text{MSOC_Share}(p) = \frac{\sum_{f \in p} \text{MSOC}(f)}{\sum_{f \in \text{Facilities}} \text{MSOC}(f)} \times 100$$

where:

- MSOC(f) is the maximum sent out capacity specified for Registered Facility f in Appendix 1(b)(v), Appendix 1(c)(v) or Appendix 1(d)(v) as applicable;
- f ∈ p denotes all Scheduled Facilities, Semi-Scheduled Facilities and Non-Scheduled Facilities f that belong to Portfolio p; and
- f ∈ Facilities denotes all Scheduled Facilities, Semi-Scheduled Facilities and Non-Scheduled Facilities that belong to a Portfolio identified under clause 2.16B.1(a);

Material Constrained Portfolios

- Clause 2.16C.2 has been amended because the ERA will not be able to do the calculations until the Energy Uplift Payments (calculated in the settlement process) are available for the Trading Week that includes the last Trading Day in the Rolling Test Window, so the deadline should be a few business days after the settlement statements are produced for that Trading Week. We are seeking feedback on how many days would be appropriate for this.

2.16C.2. The Economic Regulation Authority must, not more than [10] Business Days following the end of a Rolling Test Window, in accordance with the WEM Procedure referred to in clause 2.16D.15:

(a) calculate for that Rolling Test Window and for any relevant Fixed Assessment Period, as a percentage, the Constrained Uplift Payment Ratio for each Constrained Portfolio identified under clause 2.16B.2(b) as follows:

$$\text{Constrained Uplift Payment Ratio} = \frac{\text{CP_UP}}{\text{NC}} \times 100$$

where:

- CP UP is the number of Dispatch Intervals in the Rolling Test Window or Fixed Assessment Period (as applicable) in which:
 - the Constraint Equation relevant to the identification of the Constrained Portfolio identified under clause 2.16B.2(a) bound; and
 - a Registered Facility in the Constrained Portfolio received an Energy Uplift Payment; and
- NC is the total number of Dispatch Intervals in the applicable Rolling Test Window or Fixed Assessment Period in which the Constraint Equation relevant to the identification of the Constrained Portfolio bound;

ERA Determinations

- **Market Participants are to be notified in advance of the Economic Regulation Authority publishing the results of its determination on its website.**

2.16C.10. If, following an investigation, the Economic Regulation Authority has determined pursuant to clauses 2.16C.6 and clause 2.16C.7 that a Market Participant has breached the obligation specified in clause 2.16C.5, the Economic Regulation Authority must:

- (a) at least one day prior to publication under clause 2.16C.10(b), notify the relevant Market Participant of the determination; and**
- (b) publish details of its determination, including the name of the relevant Market Participant and the Irregular Price Offer to which the determination relates on its website.**

Offer Construction Guideline

2.16D.1. The Economic Regulation Authority must develop, maintain and publish on its website, the following guidelines:

(a) an Offer Construction Guideline that:

- i. provides guidance to Market Participants in relation to their offer price obligations under clause 2.16A.1;
- ii. details how the Economic Regulation Authority will assess prices offered under clause 2.16C.6;
- iii. permits the recovery of all efficient variable costs of producing the relevant electricity, including costs incurred under long-term take-or-pay fuel contracts;
- iv. outlines how the Economic Regulation Authority will consider offers made by different Facility types, including Electric Storage Resources;
- v. provides examples illustrating the types of conduct that the Economic Regulation Authority considers would be likely to contravene the price offer obligations under clause 2.16A.1; and
- vi. provides guidance to Market Participants on how the Economic Regulation Authority will assess inefficient market outcomes under clause 2.16C.7;

ERA Investigations

- Any guidance the Economic Regulation Authority provides to a Market Participant will be considered when undertaking an investigation.
- 2.16D.12. The Economic Regulation Authority must consider any guidance provided to a Market Participant under clause 2.16D.7 if relevant to any investigation being undertaken by the Economic Regulation Authority under clauses 2.16C.6 and 2.16C.7.**
- Following an investigation, the Economic Regulation Authority will advise Market Participant if it has determined that an Irregular Price Offer by that Market Participant has not resulted in an inefficient market outcome.
- 2.16E.2. Where the Economic Regulation Authority has determined that an Irregular Price Offer by a Market Participant has not resulted in an inefficient market outcome, the Economic Regulation Authority must advise the Market Participant on the results of the investigation.**

Compliance and Enforcement Exposure Draft

Sarah Graham

Regulation Changes

WEM Regulations

General Changes

- Minister's rule making power – extended until 31 October 2025 (regulation 7(5))
- A number of minor amendments for clarity (regulations 6, 30(3), 30(3), 31(2),(4),(5), 33(1),(2))
- Reference to the provisions in new Schedule 1 and 2 will come into effect from 1 October 2023 (regulation 4A, Part 11)

Reviewable decisions framework

- The process for review by the Electricity Review Board now outlined in full under the regulations (regulations 42 and 45A)
- Change from consultation paper – Based on PCO advice the Schedule 2 reviewable decisions provisions are now updated (and will consequently be removed from the WEM Rules)

Regulation Changes

WEM Regulations

Civil Penalty Framework

- Change from consultation paper – the ERA will not make orders under the regulations
- ERA may now issue Category A, B and C civil penalties (regulation 31(1))
- Schedule 1 civil penalty provisions – updated and assigned with a new category

Type	Category A	Category B	Category C
First Contravention	up to \$10,000	up to \$50,000	up to \$100,000
Subsequent Contravention	up to \$20,000	up to \$60,000	up to \$100,000
Daily amount	up to \$5,000	up to \$15,000	up to \$20,000

- The ERA must consider all relevant circumstances before issuing a daily amount (regulation 31(1A))
- The WEM Rules empowered to specify how civil penalty amounts may be distributed to a person that is not a Rule Participant (regulation 37(ba))

Regulation Changes

GSI and Pilbara Regulations

GSI Regulations

- Administrative amendments – now aligned with the WEM & Pilbara Regulations
- A number of minor amendments for clarity (regulations 6, 30(3))
- Schedule 1 amended – civil penalty categories aligned with the changes to the WEM
- New civil penalty provision added to Schedule 1 (resulting from GSI rule change)

Pilbara Regulations

- Definitions for procedural and reviewable decisions inserted (regulation 13A)
- Process for review by the ERB inserted (regulation 13B)
- Schedule 2 list of reviewable decisions provisions – inserted and updated from the relevant lists under the Pilbara Networks Rules

Amending WEM Rules

Summary of changes

- **Minor amendments** – typographical errors or amended for clarity (clauses 2.13.12, 2.13.21, 2.13.27(d), 2.13.39)
- **Clause 2.13.26** – amended to ensure all obligations under the self-reporting regime in Chapter 3A are captured in the wording
- **Clause 2.13.35** – amended to reduce administrative burden on ERA and the risk of disclosing commercially sensitive information
- **Infringement notices** – removed from rules as an enforcement action (clauses 2.13.36, 2.13.42, 2.13.43, 2.13.44, 2.13.45, 2.13.49, 2.15.3)
- **ERA orders** – removed from rules as an enforcement action (clauses 2.13.36, 2.13.38, 2.13.42, 2.13.44, 2.13.45, 2.15.3)

Amending WEM Rules

Summary of changes

- **Clause 2.13.36** – amended in multiple places for clarity
- **Clause 2.13.37** – related to orders by the ERB and has now been deleted as the function is already captured in clause 2.13.36
- **Clause 2.15.3** – amended for clarity regarding the processes to be outlined in the ERA’s monitoring protocol
- **Section 2.17** – reviewable decisions:
 - Reviewable decisions provisions removed (in accordance with PCO advice)
 - Replaced with clear definitions – and reference to Schedule 2 of the Regulations
- **Amended definitions:**
 - Reviewable Decision and Procedural Review – amended for accuracy
 - Civil Penalty Amount and Financial Penalty – amended from the previous “Civil Penalty” to remove potential for confusion

Amending WEM Rules

Summary of changes

- **New clause 2.13.43A** – provides for the ERA to:
 - Determine that a person other than a rule participant has been negatively impacted by a breach (in the course of its investigation)
 - Direct AEMO and/or a Rule Participant to distribute a portion of the civil penalty amount to that impacted person (in its civil penalty notice)
- **Clauses 2.13.49 and 2.13.51** – investigations register:
 - Will be established under a new clause 2.13.49A
 - Will require the ERA to publish the commencement and close of compliance investigations
 - The relevant Rule Participant will not be identified in the register

Next Steps

- **Submissions close for both consultations** – 5:00pm 7 March 2023
- Submissions should be sent to energymarkets@dmirs.wa.gov.au
- Final Drafting instructions will be provided to PCO to finalise the Amending Regulations
- Amending WEM Rules will be submitted to the Minister by mid-March
- Amending Regulations intended to be submitted to ExCo by the end of March

Draft State Electricity Objective Consultation

Kieran Rayney

A State Electricity Objective

Project Eagle drafting underway

- Reforms under the Energy and Governance Legislation Reforms (“Project Eagle”) are progressing, currently focused on drafting and introducing enabling legislation
- Government approved drafting of an objective as part of an Electricity Industry Amendment Bill
- Drafting of this State Electricity Objective (SEO) is occurring first, with the remainder of the Bill to follow

Rationale and intent for a SEO

- Provides a unifying theme for the Act
- Resolves issues of varying objectives across multiple instruments
- Reduces barriers to lower-emission technologies

Draft State Electricity Objective

Draft State Electricity Objective (SEO)

- (1) The objective of this Act is to promote efficient investment in, and efficient operation and use of, electricity services for the long-term interests of consumers of electricity in relation to —
 - (a) the quality, safety and reliability of supply of electricity; and
 - (b) the price of electricity; and
 - (c) the environment, including reducing greenhouse gas emissions.
- (2) The Minister, the Authority, the Coordinator and the Board must have regard to the State electricity objective in carrying out a function under this Act.
- (3) For the purposes of subsection (2), the Minister, the Authority, the Coordinator or the Board may give the weight to any aspect of the State electricity objective that the Minister, the Authority, the Coordinator or the Board considers appropriate in all the circumstances.
- (4) In subsection (1) —
electricity services means services that are necessary or incidental to the supply of electricity to consumers of electricity, including—
 - (a) the generation of electricity; and
 - (b) services provided by means of, or in connection with, an electricity network; and
 - (c) the sale of electricity.

Draft State Electricity Objective

Contemplating the 'Energy Trilemma'

- **Focus is the promotion of the long-term interests of electricity consumers**
- **Three limbs, of equal precedence, are articulated in the SEO:**
 - quality, safety and reliability of supply of electricity; and
 - price; and
 - the environment, including a reduction in greenhouse gas emissions.
- **Consideration of the environment in the SEO aligns with:**
 - the National Energy Objective (NEO) proposed drafting, and
 - the Electricity Networks Access Code 2004 objective

SEO in detail

Further considerations

Electricity services

- Not “supply of electricity”
- More comprehensive
- More closely aligned with the NEO

Will apply to the entire act

Does not affect historical decisions

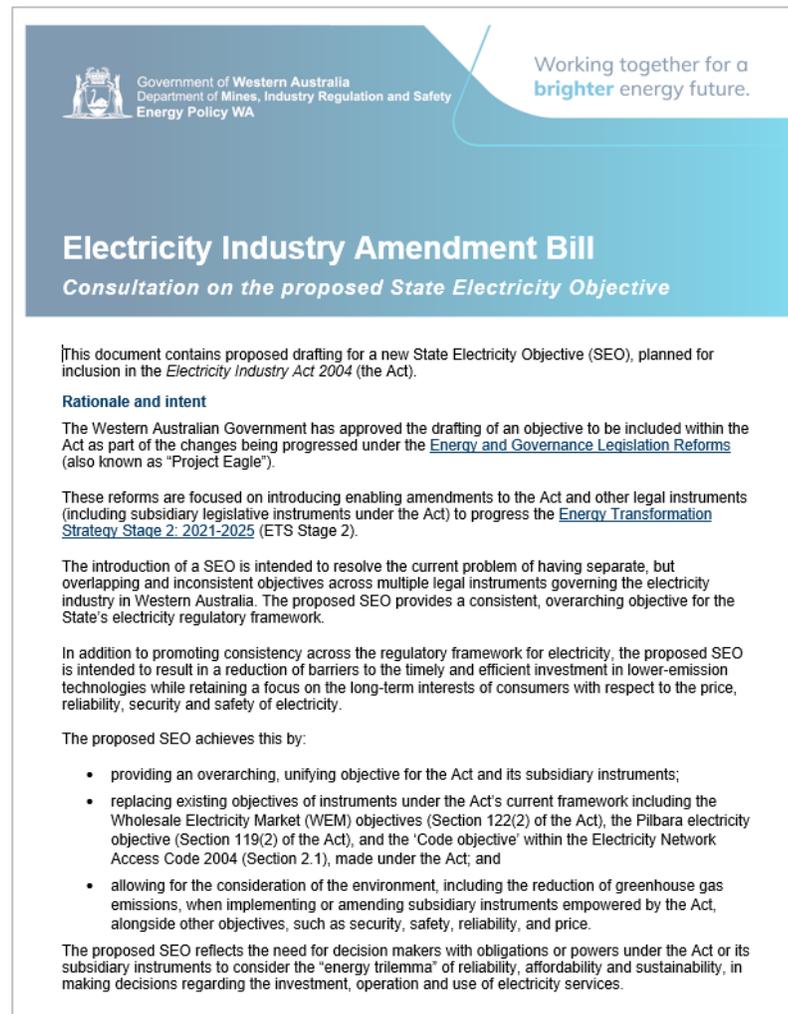
Consultation on the SEO

Information paper available

- Available on EPWA's Energy and Governance Legislation Reform page
- Open for feedback until 10 March 2023
- EPWA-info@dmirs.wa.gov.au

Drafting

- Drafting of the remaining Bill will occur through to May 2023
- The main consultation for Project Eagle is yet to come – it will occur in relation to the detail of policy changes that will occur as a result of the enabling amendments



The image shows the cover page of a consultation paper titled "Electricity Industry Amendment Bill" with the subtitle "Consultation on the proposed State Electricity Objective". The header includes the Government of Western Australia logo and the text "Government of Western Australia, Department of Mines, Industry Regulation and Safety, Energy Policy WA". A tagline on the right says "Working together for a brighter energy future." The main body of text includes an introductory paragraph, a "Rationale and intent" section, and several paragraphs detailing the reforms and the proposed SEO's objectives. A bulleted list at the bottom describes how the proposed SEO achieves its goals.

Government of Western Australia
Department of Mines, Industry Regulation and Safety
Energy Policy WA

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brighter energy future.

Electricity Industry Amendment Bill

Consultation on the proposed State Electricity Objective

[This document contains proposed drafting for a new State Electricity Objective (SEO), planned for inclusion in the *Electricity Industry Act 2004* (the Act).

Rationale and intent

The Western Australian Government has approved the drafting of an objective to be included within the Act as part of the changes being progressed under the [Energy and Governance Legislation Reforms](#) (also known as "Project Eagle").

These reforms are focused on introducing enabling amendments to the Act and other legal instruments (including subsidiary legislative instruments under the Act) to progress the [Energy Transformation Strategy Stage 2: 2021-2025](#) (ETS Stage 2).

The introduction of a SEO is intended to resolve the current problem of having separate, but overlapping and inconsistent objectives across multiple legal instruments governing the electricity industry in Western Australia. The proposed SEO provides a consistent, overarching objective for the State's electricity regulatory framework.

In addition to promoting consistency across the regulatory framework for electricity, the proposed SEO is intended to result in a reduction of barriers to the timely and efficient investment in lower-emission technologies while retaining a focus on the long-term interests of consumers with respect to the price, reliability, security and safety of electricity.

The proposed SEO achieves this by:

- providing an overarching, unifying objective for the Act and its subsidiary instruments;
- replacing existing objectives of instruments under the Act's current framework including the Wholesale Electricity Market (WEM) objectives (Section 122(2) of the Act), the Pilbara electricity objective (Section 119(2) of the Act), and the 'Code objective' within the Electricity Network Access Code 2004 (Section 2.1), made under the Act; and
- allowing for the consideration of the environment, including the reduction of greenhouse gas emissions, when implementing or amending subsidiary instruments empowered by the Act, alongside other objectives, such as security, safety, reliability, and price.

The proposed SEO reflects the need for decision makers with obligations or powers under the Act or its subsidiary instruments to consider the "energy trilemma" of reliability, affordability and sustainability, in making decisions regarding the investment, operation and use of electricity services.

The image features a solid dark blue background. In the bottom-left corner, there are several overlapping, semi-transparent geometric shapes in shades of teal and light blue. A thin white line curves across the middle of the image, starting from the left and ending on the right. Overlaid on the teal shapes is the text "We're working for Western Australia." in a white, cursive font.

*We're working for
Western Australia.*