

Strictly Confidential

10 March 2023

Energy Policy WA
Level 1, 66 St Georges Terrace
Perth WA 6000
Submitted by email: EPW-info@dmirs.wa.gov.au

Dear Sir/Madam

**ELECTRICITY INDUSTRY AMENDMENT BILL
CONSULTATION ON THE PROPOSED STATE ELECTRICITY OBJECTIVE**

Rio Tinto appreciates the opportunity to provide feedback on the drafting for a “State Electricity Objective” (**SEO**) that Energy Policy WA (**EPWA**) proposes to include in the *Electricity Industry Act 2004 (WA)(Act)*.¹

Rio Tinto has two comments in relation to proposed drafting. The first relates to the continuation of the “Pilbara resources industry” matters in sections 119(3) and (4) of the Act. The second relates to the omission of the concept of “security” of supply in the SEO.

1 Continuation of the “Pilbara resources industry matters”

Based on the Consultation Paper, Rio Tinto understands that EPWA intends to make only one limited change to Part 8A: the repeal of section 119(2) of the Act. As a result of that repeal:

- the “Pilbara electricity objective” (**PEO**) will be removed from the Act, and
- Part 8A will be subject to the overarching SEO.

Rio Tinto considers that it is important that the Government make no other substantive changes to Part 8A. Part 8A and the instruments made under it only commenced recently, following an extensive and lengthy consultation and design process that took into account and carefully balanced various factors and interests, including the unique and significant nature of the Pilbara resources industry. Any substantive change to the regulatory regime at this time would be unwarranted and have the potential to undermine regulatory and investment certainty.

¹ The proposed SEO is described in a document entitled “Electricity Industry Amendment Bill: Consultation on the proposed State Electricity Objective” available at <https://www.wa.gov.au/government/document-collections/energy-and-governance-legislation-reform> (accessed 4:07PM 1 March 2023)(**Consultation Paper**).

In particular, Rio Tinto would have significant concerns if there was any proposal to change:

- section 119(3), which currently empowers the regulations, Pilbara Networks Access Code and Pilbara Networks Rules to provide for matters a person or body who performs functions under Part 8A is to have regard to in determining whether the performance of the function meets the Pilbara electricity objective, or
- section 119(4), which sets out three specific “Pilbara resources industry matters” that may be included in the matters to which section 119(3) applies.

Sections 119(3) and (4) are a critical part of the electricity regulation regime for the Pilbara region. The principle behind them was the subject of industry consultation prior to their enactment. As they currently stand, the provisions give resources industry participants confidence that the regulation of Pilbara networks – especially those that are privately owned and form part of significant resources industry projects - will be undertaken in a way that recognises the significant contribution of the Pilbara resources industry to the State’s economy, the nature and scale of investment in the Pilbara resources industry, and the importance to the industry of a secure and reliable supply of electricity. In a sense, they provide statutory recognition that regulatory approaches used elsewhere may not be appropriate in the Pilbara region.

The importance of the principle behind sections 119(3) and (4) was recognised at the time the bill to enact Part 8A was considered by the Parliament.² In his Second Reading Speech, the Minister for Energy stated, among other things, that:

“The purpose of this bill is to deliver on the Government’s commitment to establish a fit-for-purpose regulatory framework for the Pilbara region...The bill recognises that the reforms are being implemented within the Pilbara’s established commercial and operational environment. To this end, there has been a strong focus on consultation to ensure minimal impact.”³

The Explanatory Memorandum to the bill also emphasised the importance of the principle. For example, in discussing the alignment of the PEO with the National Electricity Objective and National Gas Objective it stated:

“...although it is prudent to align these regimes with the uniform national objective, it is also important to recognise the unique context within which the Pilbara electricity networks operate, when compared with most other Australian electricity networks.

The Pilbara’s infrastructure and economy are critical contributors to Western Australia’s prosperity. Compared with other regulated networks in Australia and elsewhere, network use in the Pilbara is disproportionately focused on the high-value resources sector, large end-users, vertically integrated suppliers and significant quantities of self-supply. The Government considers it important to recognise this context in the Bill.

Accordingly, new section 119(3) permits subordinate instruments to set out matters to which a decision maker must have regard in determining whether the performance of a function meets the Pilbara electricity objective. New section 119(4) contains a non-exhaustive list of these “have regard to” factors.

This approach will allow subordinate instruments to emphasise the role the Pilbara resource sector plays in the Western Australian economy, the scale of investment in that industry, and the importance to the resources sector of maintaining a secure and reliable electricity supply...”⁴

² *Electricity Industry Amendment Bill 2019 (WA)*.

³ Mr W.J. Johnston (Cannington – Minister for Energy), *Hansard*, Assembly, Wednesday, 27 November 2019, p9425c-9427a.

⁴ *Explanatory Memorandum to Electricity Industry Amendment Bill 2019 (WA)*, at section 2.3.

RTIO requests that EPWA confirm that it has no intention to change sections 119(3) and (4), other than to replace any references to the PEO.⁵

2 Security of supply

Section 119(2)(a) of the Act (which, as noted above, appears in Part 8A) and section 2.1(a) of the *Electricity Networks Access Code 2004 (WA)(Code)* (which sets out the Code objective) are both concerned with:

"price, quality, safety, reliability and security of supply of electricity;" [emphasis added]

Notably, both objectives refer to "security" of electricity supply, as well as quality, safety and reliability.

The Consultation Paper also refers to the concept of security of supply. For example, at page 1, the paper states that:

"In addition to promoting consistency across the regulatory framework for electricity, the proposed SEO is intended to result in a reduction in 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."

However, the drafting for the proposed SEO does not refer to "security" of supply. Instead, it concerns itself only with "quality, safety and reliability of supply of electricity" (see sub-para (1)(a)).

Rio Tinto is concerned with, and questions, the omission of "security" of supply from the SEO.

As far as Rio Tinto understands the meaning of the various terms, there is a substantive difference between the concept of "security" and the concepts of "quality, safety and reliability". That difference is highlighted by the Australian Energy Market Commissions explanation of those concepts as they are used in the National Electricity Objectives. It has stated that:

"Quality

Quality can mean different things depending on the context. For example:

- the technical quality of energy, such as variations to frequency and voltage magnitude (e.g. harmonics) and imperfections in the voltage of waveform.
-
- the quality of a service that retail consumers receive from retailers and distribution businesses.

Reliability

Reliability is associated with consumer expectations regarding the dependability of their supply. Reliability requires:

- an adequate supply of capacity to meet demand (including a buffer to respond to shocks)
- a reliable transmission and distribution network
- the system to be in a secure state.

This means consumers' need can be met, in a range of circumstances, with electricity generation or supply. It also means the networks can transport energy to consumers and that the system operates smoothly.

⁵ This request extends to instruments made under sections 119(3) and (4) to the extent they rely on those provisions.

Security

Security is part of the technical resilience of the system. Security requires the system to continue operating within defined technical limits even if a major element like a generator or large consumer disconnects from the system. System services, technical standards and capabilities can be used to provide this security. For instance, inertia, frequency control and system strength all help keep the power system secure and survive major elements disconnecting for a range of reasons, like mechanical failures. This allows consumers to have confidence in their electricity and gas supply.⁶

In addition, the concept of “security” has been embedded in the Pilbara Networks Rules, where a clear distinction has been drawn (for example) between “security” and “reliability”. It provides the following definitions:

“reliability means a measure of a power system’s ability to deliver electricity to all points of consumption and receive electricity from all points of supply within accepted standards and in the amounts desired.

security means the *power system’s* ability to withstand disturbances, including include [sic] electric short circuits, unanticipated loss of *facilities* or *network elements*, or other rapid changes such as in intermittent generation.”⁷

Rio Tinto is therefore concerned that the omission of “security” in the proposed drafting for the SEO could result in a substantive gap in the objective and might lead to uncertainty in the interpretation and application of instruments made under Part 8A of the Act, such as the Pilbara Networks Rules.

In addition, Rio Tinto notes that section 119(4)(c) of the Act – which sets out the Pilbara resources industry matters – refers to “the importance of a secure and reliable electricity supply”. Rio Tinto suggests that consistency with, and the fundamental importance of that factor, provide a further reason to include “security” in the SEO.

Finally, it also appears that EPWA itself recognises the importance of “security” as a concept, and that there is a difference between security and other concepts in the context of electricity supply. Its website expresses its mission in the following terms:

“We provide policy advice to government to facilitate the delivery of secure, reliable, sustainable and affordable energy services to Western Australians.”⁸ [Emphasis added]

Rio Tinto requests that EPWA consider the insertion of the word “security” in sub-paragraph 1(a) of the drafting of the SEO.

Rio Tinto is pleased to be able to provide this feedback on the SEO and would welcome the opportunity to address any questions that EPWA may have on it.

⁶ Given its self-evident meaning, the definition of “safety” has not been included here. Refer to Australian Energy Market Commission, “*How the National Energy Objectives Shape Our Decisions*”, October 2022, at pp. iv to vi.

⁷ *Pilbara Networks Rules*, rule 8(1).

⁸ <https://www.wa.gov.au/organisation/energy-policy-wa>

The RioTinto logo consists of the word "RioTinto" in a white, serif font, centered within a solid red rectangular background.

If you wish to discuss this matter, please contact Li-Lin Ang, Senior Corporate Counsel, Rio Tinto on 043 885 2034 or li-lin.ang@riotinto.com.

Yours sincerely

Li-Lin Ang
Senior Corporate Counsel, Pilbara Infrastructure
Rio Tinto Iron Ore