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Energy Policy WA

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ALINTA ENERGY SUBMISSION: ENERGY SECTOR GOVERNANCE REFORMS

Alinta Energy appreciates the opportunity to provide feedback on the Energy Sector Governance Reforms consultation paper.

Alinta Energy has long been of the view that to be effective and efficient, the WEM institutional and governance arrangements should:

- Ensure that each agency's role is clear – for both the agency itself and the broader industry;
- Limit conflicts of interest;
- Achieve greater operational effectiveness by ensuring that there is no duplication of functions or costs occurring;
- Allow for robust energy policy development to occur in a timely manner going forward;
- Be transparent and robust;
- Result in cost savings to the market through improved efficiencies; and
- Uphold the principles of competitive neutrality.

Alinta Energy's high-level assessment against these criteria is below:

Criterion	Assessment	Comments
Clarity of roles	✓	Proposal achieves this.
Limit conflict of interest	?	Some modifications required, refer to Alinta's suggestions on the alternate pathway for reviews of rule change decisions and MAC membership.
Improved operational effectiveness	✓	Proposal achieves this.
Allow for timely policy development	✓	Proposal achieves this.
Transparency	?	Proposal largely achieves this, subject to consideration of Alinta's comments on the Regulator and Coordinator budgets and fees.
Result in cost savings	?	Proposal largely achieves this, subject to consideration of Alinta's comments on the Regulator and Coordinator budgets and fees.
Uphold principles of competitive neutrality	?	Some modifications required, refer to Alinta's suggestions on the alternate pathway for reviews of rule change decisions and MAC membership.

To that end, Alinta Energy provides in-principle support for the proposal to clarify the WA governance arrangements whereby:

- the Coordinator of Energy, supported by Energy Policy WA, will undertake policy, market development, strategic planning and overall coordination;
- the ERA will undertake economic regulation and price setting, licencing and compliance; and
- AEMO will undertake system operation, market operation and associated market administration (e.g. registration, settlement etc.).

However, in giving this in-principle support Alinta Energy considers that a number of additional factors should be considered to ensure that the interests of all stakeholders are appropriately balanced, the above criteria are met to the best extent possible, and the Wholesale Market Objectives are being best served.

Rule Change Process

As part of the Rule Change Panel Appointments Process consultation, Alinta Energy recommended that the Rule Change Process, via the Rule Change Panel, should remain independent from the Government and that this independence is necessary to avoid the Government's objectives conflicting with the Wholesale Market Objectives.

Alinta Energy has some concerns with the potential conflict of interest arising from the Rule Change Process being allocated to the Coordinator given the Minister for Energy is the responsible Minister for both the GTEs and Energy Policy WA. All public servants aim to conserve scarce government resources. Considering the government's exposure to the energy industry via its GTEs, there are many scenarios where this objective could conflict with the Wholesale Market Objectives.

Alinta Energy appreciates that there are protections built into the Rule Change Process, i.e. retaining the concept of protected provisions and referring all rule change proposals initiated by the coordinator to the Minister for Energy to review. However, under the status quo, the process allowed a participant to engage with the Minister when reviewing a protected provision rule change decision made by the Rule Change Panel. When this occurred, the Minister utilised Energy Policy WA to provide advice to address participants' concerns. This independent review is simply unable to occur under the proposed amendments to the governance arrangements.

A market participant should have the ability to refer a rule change which affects its interests for an independent review. Given this, Alinta Energy strongly recommends that further enhancements are required to allow a market participant an alternative pathway for an independent review of a rule change decision (should it be required).

This alternate pathway could be achieved several different ways:

- Amending the rules to allow rule change decisions to be subject to merits review and not just procedural review;
- Retaining an independent panel, who could be called upon when a market participant requests that a rule change decision be referred to it; or
- Amending the disputes process to allow a dispute to be raised regarding a rule change decision.

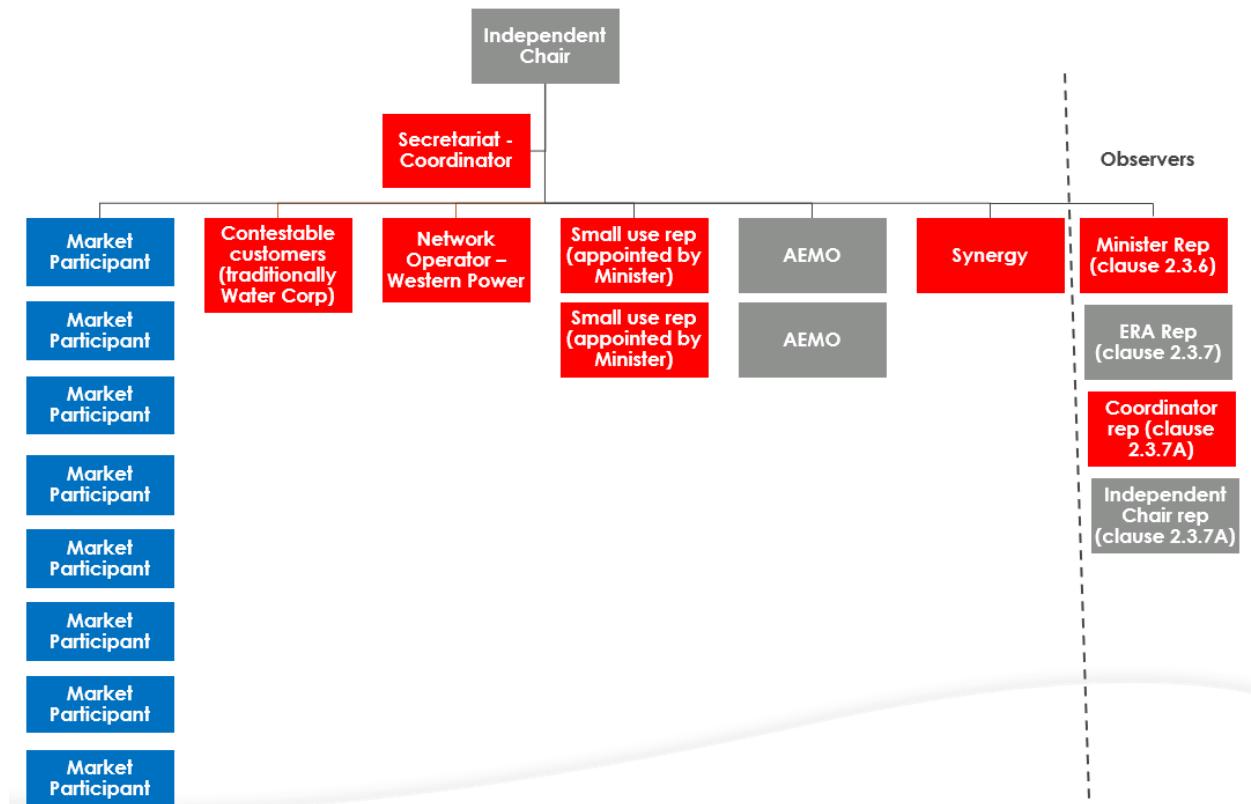
In deciding on an alternate pathway, Alinta Energy supports the adoption of a low cost and simple process given it is unlikely to be triggered often. Alinta Energy would be happy to discuss this with Energy Policy WA in greater detail.

Role and composition of the Market Advisory Committee

Alinta Energy notes that amendments to the composition of the MAC have been proposed to enable it to operate more independently from the rule maker. Furthermore, the consultation

paper notes that “it is important to enhance the role of industry participants to inform and influence the decision making by the Coordinator, as doing so will provide greater confidence in both decision making and the fair operation of the sector”.

The current proposal for MAC membership is shown in the schematic below.



Alinta Energy notes that, on paper, the proposed MAC representation looks to provide balanced representation between government interests and private sector interests. However, Alinta Energy recommends a number of changes to further ensure balanced representation is achieved and to truly allow industry participants to inform and influence the decision making by the Coordinator. Alinta Energy considers that its proposed amendments below will lead to greater confidence in both decision-making and the fair operation of the sector.

1) Contestable Customers and small-use consumers

Energy Policy WA has proposed that the MAC membership include at least one representative for Contestable Customers and has proposed that the representation of small-use consumers increased from one member to ‘at least two members’.

Alinta Energy notes that Contestable Customers and small-use consumers could potentially exceed the representation from Market Participants because there is no limit on those representatives. Alinta Energy supports the AEC’s suggestion that a limit of ‘not more than four’ members apply to Contestable Customers and small-use consumers combined.

2) Independent appointment of small-use consumers

Clause 2.3.5(e) requires that the Minister nominate at least two small-use consumer representatives. Alinta Energy notes that, traditionally, these nominated representatives are representatives from Energy Policy WA (or its predecessor policy agencies). However, to

facilitate greater confidence in both decision-making of the MAC, Alinta Energy considers that these representatives should be truly independent and without any association to Energy Policy WA or any other government department or entity.

3) Role of Synergy on MAC

Prior to the Verve Energy and Synergy Merger, the IMO repeatedly stated that Verve Energy (the Electricity Generation Corporation) and Synergy (the Electricity Retail Corporation) were Compulsory Class members due to their positions in the market as the balancer and retailer for the franchise market respectively¹. The IMO indicated multiple times that compulsory membership would be looked into as the market develops (and structural change occurs).

When the Balancing Market was introduced in 2012, and Verve Energy no longer held the responsibility of default balancer, its compulsory role on the MAC was not reviewed despite the IMO stating that compulsory membership would be looked into as the market develops (and structural change occurs).

Furthermore, when Verve Energy and Synergy merged in 2014, the rule change proposal to effect the merger simply replaced the two compulsory positions on the MAC with one compulsory position for the new entity. At the time, participants raised concerns about the merged Synergy having a MAC member representing its interests, rather than representing a class of Participants.² Again, despite these concerns and a clear structural change in the Market, Synergy's default position on the MAC was not addressed.

Alinta Energy strongly considers that now is the correct time for Synergy's compulsory membership be reviewed as by October 2022, Synergy's role in the WEM rules will be largely aligned with all other participants. While it still has a role as retailer for the franchise market, franchise customers' interests are adequately represented by the proposed small use customer reps on the MAC.

Alinta Energy does not consider that there is an adequate or justifiable reason for Synergy to retain its compulsory role on the MAC going forward and recommends that it apply to be a discretionary member under clause 2.3.5(a) like all other Market Participants.

Comments on proposed rule drafting

Alinta's comments on the proposed amending rules are contained in the tables below.

¹ For two such examples - Refer: MAC meeting No 20 minutes - MAC constitution and operating practices Concept paper and MAC meeting No 28: 12 May 2010, Agenda item 10: Annual Review of MAC composition.

² Refer RC_2013_18 Final Report



DRAFT WEM RULES AMENDMENTS – TRANSFER OF FUNCTIONS FROM THE RCP TO THE COORDINATOR

Clause	Issue	Recommendation
2.3.1C	<p>The Consultation Paper encourages MAC members to reach a consensus position and notes that the Coordinator 'must' take any dissenting views into account:</p> <p>"It is proposed that the MAC ... must endeavour to provide a consensus position and note any dissenting views when providing advice to the Coordinator on the evolution of the market, and the Coordinator must take these views into account. This is a new requirement."</p> <p>Alinta supports the MAC reaching a consensus position, or preferably a unanimous position, wherever possible.</p> <p>However, the proposed changes to the WEM rules do not appear to align with this statement.</p> <p>Clause 2.3.1C states that "the independent Chair must provide advice to the Coordinator which reflects any majority view and which includes or is accompanied by the dissenting views", but it doesn't indicate that the Coordinator 'must' take into account the dissenting views.</p>	<p>Amend clause 2.3.1C as follows:</p> <p>2.3.1C If, after allowing a reasonable time for discussion, the independent Chair of the Market Advisory Committee determines that a consensus position either will not be achieved, or is unlikely to be achieved within a time which is reasonable in the circumstances, then the independent Chair must provide advice to the Coordinator which reflects any majority view and which includes or is accompanied by the dissenting views, <u>and the Coordinator must take into account any dissenting views when performing any of the functions conferred on it under 2.2D.2.</u></p>
2.3.5	Refer to commentary in the main submission.	<p>Amend clause 2.3.5 as follows:</p> <p>Subject to clause 2.3.13, the Market Advisory Committee must comprise:</p>

Clause	Issue	Recommendation
		<ul style="list-style-type: none"> (a) at least six and not more than eight members representing Participants, excluding Synergy; (b) at least one <u>and not more than two</u> members representing Contestable Customers; (c) at least one and not more than two members representing Network Operators, of whom one must represent Western Power; (d) [blank] (e) at least two <u>independent</u> members nominated by the Minister to represent small-use consumers; (f) [blank] (g) two members representing AEMO; (h) one member representing Synergy; and (i) an independent Chair, to be appointed by the Minister under clause 2.3.8A.
2.3.5A	This clause refers to Market Generators and Market Customers which have been replaced with the term Market Participant.	Replace Market Generators and Market Customers with an appropriate term, considering the proposed registration amendments, to ensure that the MAC contains a balanced representation of members under clause 2.3.5(a).
2.3.5B	This clause prohibits the same organisation from being represented by more than one member on the MAC. However, clause 2.3.5(g) allows AEMO to have two members on the MAC.	Amend to carve AEMO out from this clause.
2.3.8A	This clause allows the Minister to appoint an independent chair of the MAC.	This clause should be extended to include a fixed term for the independent Chair to ensure regular rotation of this key role.

Clause	Issue	Recommendation
2.5.8A and 2.8.1	<p>Clause 2.5.8A requires that the Minister approve any rule changes proposed by the Coordinator.</p> <p>Clause 2.8.1 notes that a Rule Participant may apply to the ERB for a rule change decision made by the Coordinator.</p> <p>Alinta Energy is concerned that, as drafted, clause 2.8.1 and clause 2.5.8A may not allow a participant to refer a rule change approved under clause 2.5.8A to the ERB.</p>	Review and amend clause 2.8.1, if appropriate.
2.5.9(c)	<p>This clause is unnecessarily restrictive in that it requires all 4 elements to be met to proceed as a fast track rule change:</p> <p>urgently required and is essential for the safe, effective and reliable operation of the market or the SWIS.</p> <p>Alinta Energy does not recall a single fast track rule change that has met this requirement.</p>	<p>Recommend that this be amended as follows:</p> <p>“urgently required and is essential for either:</p> <ul style="list-style-type: none"> i. the safe operation; or ii. the effective operation; or iii. the reliable operation, <p>of the market or the SWIS”.</p>
2.8	As noted above, Alinta Energy considers that further enhancements are required to allow a market participant an alternative pathway for an independent review of a rule change decision (should it be required).	Alinta Energy would appreciate a meeting to discuss this further.
2.10.2A	<p>Clause 2.10.2A requires the recipient of a procedure change proposal notification under clause 2.10.2 to:</p> <ul style="list-style-type: none"> (a) determine whether the suggested amendment to or replacement of a Market Procedure is appropriate; and (b) publish on the Market Web Site details of whether a Procedure Change Proposal will be progressed with respect to the suggested amendment to or 	Amend clause 2.10.2A to include a timeframe for when a Procedure Change Proposal is required to be progressed by.

Clause	Issue	Recommendation
	<p>replacement of a Market Procedure and the reasons for that decision.</p> <p>However, there is no timeframe for when a procedure change proposal will be progressed. In an extreme scenario a procedure change proposal may never be progressed.</p>	
2.24	<p>Section 2.24 sets out the process for determining market fees. Alinta Energy notes that WEM market fees are high when compared with other energy markets. While there are reasons for this in and of itself, Alinta Energy considers that there should be some scrutiny/transparency over the Coordinator and Regulator fees by way of a consultation process.</p>	<p>Include a requirement for the ERA and Coordinator to consult on their proposed budgets relating to the performance of their respective functions under the market rules.</p> <p>This additional transparency will provide participants with comfort that the fees are reflective of the actual costs being incurred for functions conferred under the market rules.</p>

DRAFT GSI RULES AMENDMENTS – TRANSFER OF FUNCTIONS FROM THE RCP TO THE COORDINATOR

Clause	Issue	Recommendation
12(1)	<p>Clause 12(1) requires that the GAB include two persons nominated by the Minister in representing small end use consumers.</p> <p>Unlike the WEM objectives that include a specific objective regarding customers (to minimise the long-term cost of electricity supplied to customers from the South West interconnected system) which provide a basis for greater consumer representation on the MAC, the GSI objectives do not lend themselves to the requirement for two small use representatives.</p>	<p>Amend rule 12(1) to require just one representative for small end use consumers.</p>

Clause	Issue	Recommendation
12(4)	This clause allows the Minister to appoint an independent chair of the GAB.	This clause should be extended to include a fixed term for the independent Chair to ensure regular rotation of this key role.
Divisions 2A and 2B	<p>Divisions 2A and 2B set out the processes for the ERA Regulator and Coordinator Fees respectively.</p> <p>Alinta Energy considers that there should be some scrutiny/transparency over the Coordinator and Regulator fees by way of a consultation process.</p>	<p>Include a requirement for the ERA and Coordinator to consult on their proposed budgets relating to the performance of their respective functions under the market rules.</p> <p>This additional transparency will provide participants with comfort that the fees are reflective of the actual costs being incurred for functions conferred under the market rules.</p>
148A	<p>Clause 148A requires that all rule changes resulting from a Rule Change Proposal initiated by the Coordinator, other than a Rule Change Proposal to which rule 131(2) applies, must be approved by the Minister.</p> <p>Alinta Energy does not support carving out fast track rules initiated by the Coordinator from requiring Minister approval, given these rule changes could still materially impact a participant. Note - This proposal also does not align with the proposed amendments to the WEM rules.</p> <p>If a carve out is retained this it should only refer to fast track rule changes progressed under rule 131(2)a – i.e. minor and procedural rules only.</p>	Remove the words: other than a Rule Change Proposal to which rule 131(2) applies.

DRAFT WEM RULES AMENDMENTS – TRANSFER OF FUNCTIONS FROM THE ERA TO THE COORDINATOR

Clause	Issue	Recommendation
2.16.13B(a)	This clause requires the Coordinator to monitor the effectiveness of the Market Rule change process - a process that it is charged with administering.	<p>Amend the rules to either:</p> <ul style="list-style-type: none"> • Require that the ERA review the effectiveness of the rule change process; or

Clause	Issue	Recommendation
	Alinta Energy does not consider that it is appropriate for a party to review the effectiveness of its own process.	<ul style="list-style-type: none"> • Require the Coordinator to use a consultant to review the effectiveness of the rule change process.

Thank you for your consideration of Alinta Energy's submission. If you would like to discuss this further, please contact Jacinda Papps at jacinda.papps@alintaenergy.com.au or on 0417 065 955.

Yours sincerely



Jacinda Papps
 Manager, national Wholesale Regulation
 Alinta Energy