



Consultation on a Draft Pilbara Advisory Committee Constitution

26 November 2021

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Under clause A2.3.A2 of the Pilbara Network Rules (**PNR**), the Coordinator of Energy (the Coordinator) is required to develop and publish a constitution for the Pilbara Advisory Committee (**PAC**).

Under clause A2.3.4 of the PNR, the Coordinator must invite public submissions when developing or amending the PAC constitution.

The Coordinator has developed a draft PAC constitution, which is presented in the attached document. The draft PAC constitution is based on the Market Advisory Committee (MAC) and the Gas Advisory Board (GAB) constitutions and the feedback received from the MAC and GAB respectively during consultation in August and September 2021.

The Coordinator is seeking public submissions on the proposed PAC constitution.

The submission period is 20 business days from the publication of this notice.¹ Stakeholders are invited to make submissions on the draft PAC constitution before 5.00pm (WST) on 24 December 2021 by email to energymarkets@energy.wa.gov.au.

¹ The PNR do not specify the length of time for consultation on the development of the PAC constitution. The Coordinator considers that a 20 Business Day submission period is appropriate because this is consistent with the 20 Business Day submission period required under the Gas Services Information Rules for amendments to the Gas Advisory Board constitution.

Constitution of the Pilbara Advisory Committee

XX January 2022

1. Introduction

- 1.1. The Pilbara Network Rules (**PNR**) are made under the *Electricity Industry (Pilbara Networks) Regulations 2021 (Regulations)* and in accordance with section 120K of the *Electricity Industry Act 2004 (Act)*.
- 1.2. The Coordinator of Energy's (Coordinator) functions are specified in clause 38 of the PNR and are:
 - (a) the functions set out in clause A2.2D of the PNR to:
 - (i) develop procedures, and amendments to and replacements for them, as required by the PNR;
 - (ii) do anything that the Coordinator determines to be conducive or incidental to the performance of the functions set out in clause A2.2D.1 of the PNR;
 - (iii) administer the PNR;
 - (iv) develop amendments and replacements for the PNR;
 - (v) consider and, in consultation with the Pilbara advisory committee, progress the evolution and development of the regime under Part 8A of the Act and the PNR;
 - (vi) provide PAC secretariat services to the Pilbara advisory committee and support its Independent Chair;
 - (vii) undertake reviews and consultation as required under the PNR; and
 - (viii) carry out any other functions conferred, and perform any other obligations imposed, on the Coordinator under the PNR,
 - (b) the functions the Coordinator are otherwise provided under the Act, the Regulations, the PNR; the Pilbara Networks Access Code or the Electricity Networks Access Code 2004.
- 1.3. The Coordinator cannot make amending rules unless they are satisfied that the PNR, as proposed to be amended or replaced, are consistent with the Pilbara electricity objective.
- 1.4. The Pilbara electricity objective is stated in clause 119(2) of the Act and the matters a person or body must have regard to in determining whether the performance of a function meets the Pilbara electricity objective is specified in clause 4 of part 2 of the Regulations (see Appendix 1 of this Constitution).
- 1.5. This Constitution of the Pilbara advisory committee is prepared in accordance with clause A2.3.A2 of the PNR.
- 1.6. Terms used in this Constitution have the same meaning as defined in the PNR.
- 1.7. If a provision of this Constitution is inconsistent with a higher order document (the Act, Regulations, PNR or a procedure developed under the PNR), then the provision in the higher order document prevails to the extent of the inconsistency.

2. Terms of reference

- 2.1. The Pilbara advisory committee is formed under clause A2.3.1 of the PNR and is a committee of industry representatives convened by the Coordinator to:
 - (a) advise the Coordinator regarding rule change proposals and, if applicable under clause A2.10.6A of the PNR, procedure change proposals;
 - (b) advise custodians regarding procedure change proposals;

- (c) advise the Coordinator, the independent system operator for Pilbara networks (ISO) and the Economic Regulation Authority (Authority) on the development of rule change proposals where requested by the Coordinator, the ISO or the Authority in accordance with clauses A2.5.1A or A2.5.1B or A2.5.1C of the PNR; and
 - (d) advise the Coordinator regarding matters concerning, and the Coordinator's plans for, the evolution and development of the regime under Part 8A of the Act and the PNR.
- 2.2. In carrying out its functions, the Pilbara advisory committee must have regard to the Pilbara electricity objective as set out in clause 119(3) of the Act and the matters specified in clause 4 of the Regulations and any recommendations made by the Pilbara advisory committee must be consistent with the Pilbara electricity objective.
- 2.3. Pilbara advisory committee members or their proxies are required to act in the best interests of the operation, management, security and reliability of the interconnected Pilbara system and other Pilbara networks.
- 2.4. Pilbara advisory committee members do not vote on issues and must endeavour to reach a consensus on any issue before the committee. If, after allowing a reasonable time for discussion, the independent Chair of the Pilbara 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.
- 2.5. The Pilbara advisory committee may establish Working Groups comprised of representatives of rules participants and other interested stakeholders to assist it in advising the Coordinator, the Authority, the ISO and network service providers (NSPs).

3. Membership terms

- 3.1. In accordance with clause A2.3.5 of the PNR, the Pilbara advisory committee must comprise:
- (a) at least one and not more than six members representing rules participants not listed in the following paragraphs;
 - (b) at least one independent member nominated by the Minister to represent the interests of contestable customers;
 - (c) for each registered NSP, a member to represent the NSP;
 - (d) for each excluded NSP, if the NSP so chooses, a member to represent the NSP;
 - (e) at least one independent member nominated by the Minister to represent the interests of small-use customers;
 - (f) a member to represent the ISO; and
 - (g) an Independent Chair, to be appointed by the Minister under clause A2.3.8A of the PNR.
- 3.2. The Minister may appoint a representative to attend Pilbara advisory committee meetings as an observer, as outlined in clause A2.3.6 of the PNR.
- 3.3. The Authority may appoint a representative to attend Pilbara advisory committee meetings as an observer, as outlined in clause A2.3.7 of the PNR.
- 3.4. The Coordinator or the independent Chair may invite a person to attend Pilbara advisory committee meetings as an observer, either for a specified meeting or meetings or until further notice.

Classes of members

- 3.5. Members who represent a single entity (each registered NSP, any excluded NSP and the ISO) and the members nominated by the Minister to represent contestable customers or small-use consumers are compulsory class members.

3.6. Members who represent rule participants under clause 3.1.(a) are discretionary class members.

Proxies

3.7. Compulsory class members who are unable to attend a meeting can send an appropriate proxy with similar skills and experience to attend meetings in their place.

3.8. Discretionary class members who are unable to attend a meeting can request the attendance of an appropriate proxy who must have similar skills and experience. Discretionary class members cannot send a proxy by right. Permission for the attendance by proxies will be at the independent Chair's discretion, which must not be withheld unreasonably.

3.9. Observers appointed by the Minister or the Authority can send proxies to attend meetings in their place.

Meeting attendance

3.10. The Pilbara advisory committee may continue to perform its functions under clause A2.3.1 of the PNR despite any vacancy, provided that a quorum is met (see clauses 6.3 and 6.4 of this Constitution).

3.11. Each member is required to make themselves reasonably available for all meetings. Members who have not been reasonably available for all meetings may be removed by the Coordinator under clause 4.11 of this Constitution. Proxies sent by compulsory class members count towards attendance by the compulsory class members. Proxies sent by discretionary class members do not count towards attendance by the discretionary class members.

3.12. Each member and observer is required to:

- (a) be prepared for all Pilbara advisory committee meetings, to read the papers and to actively contribute to discussions; and
- (b) not use their position or information gained as a member or observer improperly to gain an advantage for themselves or anyone else, or to cause detriment to the Coordinator or anyone else.

3.13. Each member, other than small-use customer representatives under clause 3.1(e) of this Constitution, and observer must pay their own expenses associated with participating in the Pilbara advisory committee.

4. Appointing and replacing members

4.1. The Coordinator may appoint members and terminate membership of the Pilbara advisory committee in accordance with clauses A2.3.8, A2.3.10 and A2.3.11 of the PNR and section 4 of this Constitution.

4.2. Compulsory class members who represent registered NSPs, excluded NSPs or the ISO must be nominated to the Coordinator by the represented entity.

4.3. The Coordinator will seek nominations for discretionary class members of the Pilbara advisory committee on the Coordinator's website, by email to recipients of Energy Policy WA's weekly RulesWatch newsletter, and via direct contact with appropriate industry groups or any other means the Coordinator considers appropriate. Any company or individual can make nominations.

4.4. Each member appointed following an annual composition review will usually be appointed for a term of two years, subject to any earlier termination.

4.5. The Coordinator may appoint members following an annual composition review for a term shorter or longer than two years, including to ensure that the terms of half of the discretionary members expire each year.

4.6. Where a member is appointed to a vacated position on the Pilbara advisory committee that is not vacated due to the expiration of the position's term, the term of the replacement member is for the duration of the previous member's remaining length of tenure.

- 4.7. A member may be reappointed to the Pilbara advisory committee unless they have been a member for the six or more consecutive years immediately before the proposed reappointment period begins.
- 4.8. No more than one individual from the same employing organisation can be a member of the Pilbara advisory committee at any one time.
- 4.9. When appointing and removing members of the Pilbara advisory committee, the Coordinator will consult with the independent Chair, and take nominations from rules participants and industry groups that they consider relevant to the regime under Part 8A of the Act or the PNR.
- 4.10. If practicable, and taking into account the requirements of the PNR regarding the Pilbara advisory committee composition, the Coordinator will choose members from among those persons nominated.
- 4.11. Each year the Coordinator will review the performance and attendance of all Pilbara advisory committee members in consultation with the independent Chair. Following the review, if the Coordinator determines that a member has not met the requirements of membership as set out in this Constitution, then the Coordinator may:
 - (a) for a compulsory class member, request the party that has appointed the member to nominate another member; or
 - (b) for a discretionary class member, terminate the membership of, or decide to not reappoint the member, and must then follow the process to fill the vacancy as set out in clauses 4.9 and 4.10 of this Constitution.
- 4.12. The Coordinator may also remove a member of the Pilbara advisory committee at any time in the circumstances described in clause A2.3.11 of the PNR.
- 4.13. A member of the Pilbara advisory committee may resign by giving notice to the Coordinator in writing. The Coordinator, in accordance with clause A2.3.13 of the PNR, may appoint a replacement member for the duration of the previous member's remaining length of tenure.
- 4.14. When a position on the Pilbara advisory committee is vacant at any time for any reason, the Coordinator must, in accordance with clause A2.3.13 of the PNR, use reasonable endeavours to appoint a suitable person to fill the position. For the avoidance of doubt, the Pilbara advisory committee can continue to perform its functions despite any vacancy.
 - (a) For compulsory class members, the Coordinator will request that a suitably qualified replacement nominee is provided to attend meetings.
 - (b) For discretionary class members, the Coordinator will appoint a suitable representative, in accordance with clauses 4.9 and 4.10 of this Constitution, and in accordance with the requirements of the PNR.

5. Convening the Pilbara advisory committee

- 5.1. The independent Chair must convene the Pilbara advisory committee:
 - (a) in relation to a rule change proposal, if the independent Chair or the Coordinator considers that advice is required from the Pilbara advisory committee or if the rule change proposal involves amendments to the harmonised technical rules, in which case the meeting will be called before the due date for submissions on the proposed changes;
 - (b) in relation to a Procedure Change Proposal, if the independent Chair, the Coordinator or a custodian considers that advice is required from the Pilbara advisory committee, in which case the meeting will be called before the due date for submissions on the proposed changes;
 - (c) in relation to a rule change proposal or procedure change proposal, if two or more members of the Pilbara advisory committee have informed the independent Chair in writing that they consider that advice is required from the Pilbara advisory committee;

- (d) in relation to an application for exemption from one or more requirements under the PNR where the ISO refers the application to the Pilbara advisory committee under clause 57(5) of the PNR;
- (e) on any occasion when two or more members of the Pilbara advisory committee have informed the independent Chair in writing that they wish to bring a matter regarding the evolution or the development of the regime under Part 8A of the Act or the PNR before the Pilbara advisory committee for discussion;
- (f) on any occasion the Coordinator has informed the independent Chair that they wish to bring a matter regarding the evolution or the development of the regime under Part 8A of the Act or the PNR before the Pilbara advisory committee for discussion; and
- (g) where practicable, consistent with the provisional schedule of Pilbara advisory committee meetings issued annually by the PAC secretariat.

6. Conduct of meetings

- 6.1. The independent Chair may determine procedures for meetings of the Pilbara advisory committee.
- 6.2. The Pilbara advisory committee may provide advice or make recommendations to the Coordinator on any issue relating to the regime under Part 8A of the Act in accordance with clause 2.4 of this Constitution.
- 6.3. The Pilbara advisory committee can only make a recommendation to the Coordinator if a quorum of members is present at the relevant discussion.
- 6.4. A quorum requires at least the following to be present at the meeting:
 - (a) 50% of total current members;
 - (b) one member representing contestable customers;
 - (c) one member representing small-use customers;
 - (d) at least 50% of current discretionary members; and
 - (e) all but one members representing registered NSPs.
- 6.5. Meetings of the Pilbara advisory committee:
 - (a) may be held at a location nominated by the independent Chair;
 - (b) may be held using on-line technology determined by the independent Chair; and
 - (b) must allow remote participation by electronic means.
- 6.6. Meetings of the Pilbara advisory committee are recorded for the purpose of ensuring the accuracy of meeting minutes. These recordings are therefore considered temporary and are no longer considered necessary once the minutes of a meeting are confirmed and will be periodically deleted.

7. Role of the PAC secretariat and independent Chair

- 7.1. The PAC secretariat will provide secretariat services to the Pilbara advisory committee and support the independent Chair, including in performing the functions in clauses 7.2 and 7.3 of this Constitution.
- 7.2. The PAC secretariat will:
 - (a) develop and issue a provisional schedule of meetings (under the direction of the independent Chair) and maintain the diary of the Pilbara advisory committee;
 - (b) compile the meeting papers and send them by email to all members and observers of the Pilbara advisory committee and publish the papers on the Coordinator's Website.

The PAC secretariat will endeavour to issue papers to all members and observers, at least five business days before each meeting, except for any late papers approved by the independent Chair;

- (c) prepare the minutes of each Pilbara advisory committee meeting and endeavour to send them by email to all members and observers of the Pilbara advisory committee within ten Business Days of the meeting; and
- (d) publish the minutes on the Coordinator's Website.

- 7.3. The independent Chair may develop and submit rule change proposals based on advice received from the Pilbara advisory committee regarding the development of the regime under Part 8A of the Act or the PNR.
- 7.4. The independent Chair may, at their discretion, approve late papers for a Pilbara advisory committee meeting.

8. Interaction between the Pilbara advisory committee, the Coordinator and the independent Chair

- 8.1. All written communications related to the activities of the Pilbara advisory committee from the members and observers of the Pilbara advisory committee must be sent to the PAC secretariat via e-mail at: energymarkets@energy.wa.gov.au.
- 8.2. Communications between the members and observers of the Pilbara advisory committee and the PAC secretariat will be via email to: energymarkets@energy.wa.gov.
- 8.3. The Coordinator will provide the independent Chair, members and observers of the Pilbara advisory committee with information in their possession that is directly relevant to the issues being addressed (subject to the Coordinator's obligations of confidentiality).
- 8.4. The Coordinator will, where reasonably practicable, notify the Pilbara advisory committee of a submitted rule change proposal and give the Pilbara advisory committee an opportunity to comment on the process to be used for progressing the rule change proposal.
- 8.5. The Pilbara advisory committee may request that a rule change proposal is subjected to the fast track rule change process or the abridged standard rule change process.
- 8.6. The Coordinator may decide to subject a rule change proposal to the fast track rule change process or the abridged standard rule change process upon request of the Pilbara advisory committee.
- 8.8. After the publication of a notice of a rule change proposal, the Coordinator will provide a copy of the notice to the Pilbara advisory committee.
- 8.9. The Coordinator will include in their draft rule change reports (in accordance with clause A2.7.7 of the PNR) a summary of the views expressed by the members of the Pilbara advisory committee (or Pilbara advisory committee working group), if the Pilbara advisory committee (or Pilbara advisory committee working group) has met to consider a rule change proposal.
- 8.10. The Coordinator will include reasons in their Final Rule Change Reports (in accordance with clause A2.7.8(bA) of the PNR) if they have decided not to follow partially or fully the advice received from the Pilbara advisory committee.
- 8.11. A custodian will include in their procedure change reports (in accordance with clause A2.10.13 of the PNR) a summary of the views expressed by the members of the Pilbara advisory committee (or Pilbara advisory committee working group), if the Pilbara advisory committee (or Pilbara advisory committee working group) has met to consider a procedure change proposal.

9. Governance arrangements between the Pilbara advisory committee and working groups

- 9.1. The Pilbara advisory committee may establish and disband working groups as per clause A2.3.17 of the PNR.

- 9.2. The Pilbara advisory committee must determine the scope of work and terms of reference for each working group. The Pilbara advisory committee may approve any amendments to the terms of reference or membership of any working group at any time.
- 9.3. The terms of reference for a working group will be tailored to the specific requirements of each working group and typically include the:
 - (a) background (reason for the establishment of the working group);
 - (b) purpose and scope of work of the working group;
 - (c) roles and responsibilities of members of the working group;
 - (d) membership of the working group;
 - (e) administration, secretariat and meeting arrangements for the working group; and
 - (f) reporting arrangements to the Pilbara advisory committee.
- 9.4. Working groups must report to the Pilbara advisory committee at least once every two months, unless otherwise specified in the terms of reference for the working group. Reporting will be via the working group secretariat. The working group will report to the Pilbara advisory committee at any other times requested by the Pilbara advisory committee. Day-to-day interaction between the Pilbara advisory committee and the working group will be via the PAC secretariat.
- 9.5. Working groups must refer issues outside the scope of the working group's terms of reference back to the Pilbara advisory committee for consideration.
- 9.6. Once a working group has been established, the Pilbara advisory committee delegates to the working group the ability to discuss the matters within the scope of the working group's terms of reference. The working group must report back to the Pilbara advisory committee any of its recommendations.
- 9.7. The independent Chair must, through the PAC secretariat, inform the Coordinator if the Pilbara advisory committee establishes a working group, and must provide the Coordinator with a copy of the terms of reference for each working group.

Appendix 1 Pilbara Electricity Objective

The Pilbara Electricity Objective, as outlined in section 119(2) of the Act is:

The objective of this Part (the Pilbara electricity objective) is to promote efficient investment in, and efficient operation and use of, services of Pilbara networks for the long-term interests of consumers of electricity in the Pilbara region in relation to —

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of any interconnected Pilbara system.

Clause 4 of the Regulations specifies the following matters that must be regarded in relation to the Pilbara electricity objective:

For the purposes of section 119(3) of the Act, the following are the matters a person or body that performs a function under Part 8A of the Act is to have regard to in determining whether the performance of the function meets the Pilbara electricity objective —

- (a) the contribution of the Pilbara resources industry to the State's economy;
- (b) the nature and scale of investment in the Pilbara resources industry;
- (c) the importance to the Pilbara resources industry of a secure and reliable electricity supply;
- (d) the nature of electricity supply in the Pilbara region, including whether or not regulatory approaches used outside the Pilbara region are appropriate for the region, Pilbara network users and Pilbara networks;
- (e) any other matter the person or body considers relevant.