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15 August 2022

Ms Dora Guzeleva  
Director Wholesale Markets  
Energy Policy WA  
Via email: energymarkets@dmirs.wa.gov.au

Dear Ms Guzeleva,

## Civil Penalties and Reviewable Decisions

The Australian Energy Market Operator (AEMO) welcomes the opportunity to provide this submission in response to the consultation paper entitled “Proposed Changes to the WEM, GSI and Pilbara Regulations – Civil Penalties and Reviewable Decisions” published on 18 July 2022.

AEMO generally supports the proposals made regarding the Wholesale Electricity Market Regulations (WEM Regulations) and Gas Services Information Regulations (GSI Regulations). AEMO does not have functions with respect to the North West Interconnected System and, therefore, has no comments to make regarding the proposed amendments to the Pilbara Regulations.

AEMO notes, in particular, three proposals in the consultation paper. First, Energy Policy WA (EPWA) proposes to establish new civil penalty categories, as outlined in section 2.1.2 of the consultation paper. Second, EPWA proposes to amend Schedule 1 of the WEM Regulations, based (in part) on advice from the Economic Regulation Authority (ERA). The consultation paper states that the ERA is reviewing the 1 February 2022 companion version of the Wholesale Electricity Market Rules (WEM Rules) in the context of its new risk assessment framework. Third, EPWA proposes to develop a decision matrix to assist in categorising new civil penalty provisions.

AEMO notes public consultation undertaken as part of the development of the Tranche 1 Amending Rules<sup>1</sup> and, in particular, meeting 13 (9 June 2020) of the Transformation Design and Operation Working Group (TDOWG). At this meeting, there was a detailed discussion about civil penalties in the context of Chapter 3A and Appendix 12 of the WEM Rules. AEMO considers that Market Participants' compliance with clauses 1.41.2, 3A.1.1, 3A.5.7, 3A.6.1, 3A.8.1, 3A.8.5(a) 3A.10.1(a), and 3A.13.3 of the WEM Rules is critically important. Non-compliance may materially affect AEMO's ability to manage power system security and reliability. The 1 February 2022 companion version of the WEM Rules states that these clauses are “intended to be” civil penalty provisions, but does not specify which civil penalty category would apply. AEMO considers that, consistent with the approach

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<sup>1</sup> Wholesale Electricity Market Amendment (Tranche 1 Amendments) Rules 2020.



discussed at the TDOWG meeting, these clauses should be designated as Category C civil penalty provisions. Importantly, designating a clause as a Category C civil penalty provision would set the maximum civil penalty amount, however, the ERA and the Electricity Review Board could impose any amount up to the maximum amount based on an assessment of the relevant factual circumstances.

AEMO raises this matter as table 2 in section 2.1.2 of the consultation paper, which specifies indicative criteria for civil penalty categories, describes the impact of non-compliance with Category C civil penalty provisions in financial terms. AEMO requests that technical criteria, including power system security and reliability, is included in the final criteria. In addition, AEMO suggests that the column titled 'Types of Provisions' is expanded to include Market Participants' obligations relating to generator performance standards, monitoring, and reporting obligations as Category C civil penalty provisions.

If you would like to discuss any of the matters raised in this submission, please contact Mike Hales at [mike.hales@aemo.com.au](mailto:mike.hales@aemo.com.au).

Yours sincerely,

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Martin Maticka

**Group Manager – WA Market Development**