8 August 2022 **Our Ref: CWF-20220808**

Mr Jai Thomas
Acting Coordinator of Energy
Energy Policy WA
Level 1, 66 St Georges Terrace
PERTH WA 6000

Dear Mr Thomas

RE: PROPOSED CHANGES TO THE WEM, GSI AND PILBARA REGULATIONS – CIVIL PENALTIES AND REVIEWABLE DECISIONS

Thank you for the opportunity to comment on the proposed changes to Wholesale Electricity Market (WEM), Gas Services Information (GSI) and Pilbara Regulations.

Collgar Wind Farm (Collgar) broadly supports the compliance framework for the new WEM, and specifically that it is more risk-based. However, some of the further amendments outlined in this subsequent consultation paper lack sufficient rationale demonstrating the benefit, detail on implementation plans, and how the cost of that implementation compares to any benefits.

Collgar submits the following comments on specific aspects of the proposal.

Equivalent provisions

Collgar supports the approach that if a breach of an equivalent provision of the WEM Rules occurs prior to the date the amending regulations come into force, then a subsequent breach may still be considered in determining whether a latter breach is a subsequent contravention. However, Collgar recommends that Energy Policy WA (EPWA) considers the following in designing its implementation:

- Whether the legal framework permits such an approach.
- The criteria for determining whether a clause is equivalent.

In some cases, whether a clause is equivalent will be clear, either because it is not amended or the amendments are minor (e.g., change in numbering, minor drafting changes). However, it will be less clear whether clauses that are more substantially amended are new obligations or equivalent, amended obligations. For example, the changes to the market power mitigation regime may represent a material change given their nature, even though the regime itself continues. Similarly, the Australian Energy Market Operator's (AEMO) approach to dispatch will be substantially different, although how a Market Participant manages its obligations will potentially be largely unchanged (except for Synergy).

T +61 (0)8 6465 9100 | F +61 (0)8 6465 9199 | E enquiries@collgar.com.au | ABN 27 130 586 088
Office: Level 2, 1008 Hay St, Perth WA 6000 | PO Box 7522, Cloisters Square PO, WA 6850

Guidance from EPWA and/or the Economic Regulation Authority (ERA) on the application of this approach would be useful.

Collgar also suggests that any subsequent breaches that occur prior to the ERA determining the initial breach ought to not be considered a subsequent breach. This is because the Rule Participant has not had the opportunity to consider the ERA's WEM Rule interpretation and adjust its systems and processes accordingly.

Interim orders

Collgar supports, in principle, that the ERA will have the authority to issue interim orders for *material* matters. Collgar does not support interim orders being used for investigations of alleged breaches that will materially affect the operation of the WEM and/or other Market Participants. They ought to be used infrequently and for a short duration.

Collgar would value more information on:

- the criteria the ERA will use to determine whether an interim order is necessary and appropriate;
- the time the ERA has to undertake its investigation and whether this will be prioritised compared to other investigations; and
- how, if at all, the Rule Participant(s) subject of the order would be compensated for losses due to the interim order if the subsequent investigation found there was no compliance breach or that breach was minor in nature.

Enforceable undertaking

Collgar is interested to understand what benefit an enforceable undertaking may bring, compared to the arrangements already available, and whether these benefits would outweigh the costs to implement. This includes the cost of legal fees for both the ERA and the Rule Participant and other associated costs. Collgar does not support adding enforceable undertakings to the compliance regime to the extent it is costly and does not solve a material problem.

Redress

Amending the WEM Regulations to enable financial penalty amounts to be distributed to a party that is not a Rule Participant is a deviation from previous policy decisions. This includes:

- decisions through the market settlement workstream that the total market settlement amount must 'remain whole', and that it was not appropriate to settle amounts with parties who are not Rule Participants. Even adding the Network Operator as a settlement party for the purpose of Essential System Service (ESS) cost recovery was considered a material change; and
- commentary from EPWA through the cost-allocation review currently underway that it would not be appropriate to levy 'market' costs to parties outside the WEM Rules, including distributed energy resources (DER) parties (either directly or via consolidated revenue). This is despite those parties benefiting from the costs incurred within the framework of the WEM Rules (for example, costs to develop DER platforms and undertake DER trials, which are currently borne by existing Market Participants).

It is unclear why the approach to distributing civil penalties should diverge from the above. It would not be appropriate to maintain that parties who are not Rule Participants, for example consumers

with DER, cannot contribute to related market costs but that if they are negatively affected by an action within the market then they are compensated via the distribution of civil penalties. A consistent approach must be applied.

It is also likely that the cost to implement such an approach would outweigh the benefit, particularly in a market where non-contestable customers are not paying for the full cost of the energy they consume.

Collgar recommends further consideration and consultation before committing to amending the WEM Regulations and clause 9.21 of the WEM Rules enabling redress.

Minister's rule-making power

Collgar supports extending the Minister's rule-making power to enable swift and efficient implementation of further amending rules needed to implement WEM reform. Collgar questions whether the extension date of 31 March 2025 is optimal. A date in 2026 would be preferrable to enable further amendments to be made following implementation of five-minute settlement from 1 October 2025.

Public breaches register

Collgar does not support the public breaches register including all compliance investigations the ERA has initiated. This is because the investigation may find that the Rule Participant was not in breach, or that the breach was more minor in nature. Publishing this alleged, but unconfirmed, information creates reputational risks for Rule Participants, which could be very detrimental if they are in the process of striking new commercial arrangements, developing a project or refinancing, as examples.

Further, it is not clear that there is benefit of publishing all confirmed breaches, as many will be minor in nature and create 'noise', distracting readers from the material breaches that are the primary subject of the register. Collgar recommends that the public breaches register remains as proposed through the previous Energy Transformation Taskforce decisions on compliance, including that it only contains material breaches.

The consultation paper states that publication of the initiation of compliance investigations will inform participants of the compliance actions the ERA is focusing on. Collgar suggest EPWA considers an alternative approach that maintains confidentiality, for example that used by the Australian Securities and Investment Commission (ASIC) and the Australian Taxation Office (ATO).

Reviewable decisions

Collgar supports adding a schedule into the WEM Rules to identify the reviewable decisions. The consultation paper states that the WEM Regulations would still need to be amended periodically to give effect to a reviewable decision (or civil penalty) clause. Collgar would value more information on this process and queries whether there is potential for confusion where a clause is included in the Schedule in the WEM Rules but isn't operable due to the WEM Regulations not yet being amended.

Conclusion

Collgar looks forward to reviewing the draft Amending WEM Regulations later in the year, including the revised schedules for civil penalties and reviewable decisions.

Collgar does not have any comments on the proposed changes to the GSI and Pilbara Regulations as these do not apply to its business.

Thank you for considering Collgar's comments. Please do not hesitate to contact me to discuss if that is helpful.

Yours sincerely

REBECCA WHITE

REGULATORY AND TRADING MANAGER