



Pilbara Networks Rules Rule Change Proposal Submission

PRC_2022_01

Integrated LNG Systems

Submitted by:

Name:	James Campbell-Everden
Phone:	+61 428 379 234
Email:	james.campbell-everden@pilbaraisoco.com.au
Organisation:	Pilbara ISOC Co Limited (ACN 650 785 783)
Address:	Level 11, 12-14 The Esplanade, PERTH WA 6000
Date submitted:	9 January 2023

Submissions on Rule Change Proposals can be sent by:

Email to: energymarkets@energy.wa.gov.au

Post to: Coordinator of Energy
Attn: Director, Wholesale Markets
C/o: Energy Policy WA
Locked Bag 11, Cloisters Square
PERTH WA 6850

-
- 1. Please provide your views on the proposal, including any support, objections, or suggested revisions.**

Introduction

- 1 The ISO appreciates the opportunity to make comment on proposed amendments (**Draft Rules**) to the Pilbara Networks Rules set out in the Coordinator's draft rule change report (**Draft Report**) in respect of PRC_2022_01 (**Rule Change Proposal**).
- 2 Words capitalised that are not defined in this document have the meaning given to those terms in the Pilbara Network Rules.
- 3 In addition to participating in the Pilbara Advisory Committee and chairing the Technical Working Group at the request of the Pilbara Advisory Committee, the ISO has a range of functions under the Pilbara Network Rules and is proposed to have further functions under the Draft Rules, which are more particularly set out in the ISO's submission in the first submission period.
- 4 In this response, the ISO observes that many of the concerns identified in the first submission period have been addressed by the work of the Technical Working Group and

the Pilbara Advisory Committee such that the ISO is now, subject to the content of this submission, of the view that material technical risks can be identified and mitigated under the Draft Rules.

- 5 The ISO also observes that the Draft Rule changes includes a number of conceptual improvements on the approach adopted in the Rule Change Proposal, which also mitigate some risks identified in the ISO's first submission period submissions.
- 6 Finally, there are a number of matters that the ISO suggests the Coordinator should consider in work leading up to the final decision.

The Draft Rules are an improvement on the Rule Change Proposal

- 7 The ISO considers that the Draft Rules represent a conceptually more certain approach to addressing the objective of allowing for the connection of an LNG facility with the particular sensitivities and characteristics of the Pluto facility.
- 8 This has been achieved by addressing a number of the stakeholder concerns in relation to substantive and drafting aspects of the Rule Change Proposal.
- 9 The ISO's engagement with the Pilbara Advisory Committee and the Technical Working Group has also been useful in establishing a degree of consensus that key characteristics of the Draft Rules, including in relation to the establishment of a framework to allow for the establishment of CPC Requirements, can be achieved while allowing for sufficient scope for risk identification and mitigation.
- 10 Given the ISO's functions under the Pilbara Network Rules and the Draft Rules, this latter element is a critical pre-condition to the ISO being comfortable with the Draft Rules.

Further considerations for drafting

- 11 The ISO proposes the following additional points for consideration by the Coordinator.

The exercise of discretion and CPC Requirements

- 12 First, in relation to the exercise of discretion by the ISO and the Registered NSP to agree CPC Requirements in clause 274C of the Draft Rules, the ISO considers that the Coordinator should consider extending this discretion to be an "absolute discretion".
- 13 A practical effect of taking this approach would be to provide limited relief from the general obligation of the ISO and the Registered NSP to act in accordance with the Pilbara Electricity Objective and GEIP.
- 14 There are a small number of instances in the Pilbara Network Rules where the ISO and the Authority have "absolute discretion" and the ISO considers that the potential complexity associated with an agreement to CPC Requirements is sufficiently complex as to merit a similar standard of discretion. This is because:
- a. the factors that would otherwise direct and constrain the exercise of discretion or another function, while generally acceptable and prudent, are capable of being the subject of technical and commercial disagreement between parties the resolution of which is likely to be complex and time consuming, given the potential for technical disagreement and the potential for a divergence in the interests of relevant parties;
 - b. if agreement in respect of CPC Requirements is not reached, then the ISO's determination under clause 274C(4) to terminate the process under clause 274C(1)(b)(ii) will itself be subject to the general factors applicable to the exercise of a function under the Pilbara Network Rules;

- c. if CPC Requirements are not agreed, then it would still remain open for the Connection Applicant to seek a derogation under the Pilbara Network Rules and this operates as an alternative position, particularly if the Registered NSP and the Connection Applicant are agreed but the ISO does not agree to the CPC Requirements.

Compliance with CPC Requirements should be broadened

- 15 Second, in respect of clause 274F of the Draft Rules, the obligation on the Facility and the Facility Controller to comply with CPC Requirements should extend not only to the Connection Applicant but also to any Registered NSP if the CPC Requirements require observance of plant and equipment or modifications outside the Facility.

Clarify that the exercise or non-exercise of discretion and related conduct is a “function”

- 16 Third, the ISO’s conduct in respect of an actual or anticipated agreement to CPC Measures (or decision to not agree) should attract the immunities available in respect of the performance of functions, generally, under the *Electricity Industry Act 2004 (WA) (EI Act)* and the *Electricity Industry (Pilbara Networks) Regulations 2021 (WA) (Regulations)*.
- 17 The ISO considers this would be put beyond doubt if the conduct undertaken by the ISO in respect of CPC Measures could be characterised as being “functions”.

Agreed CPC measures do not amount to a contract, unless otherwise agreed

- 18 Fourth, and also in relation to immunities, an agreement to CPC Measures by the Registered NSP, the Connection Applicant and the ISO should be clarified as not amounting to a contract within the meaning of section 120ZB(3) of the EI Act or clause 24 of the Regulations, unless that is the clear intention of the parties and that intention along with the contract is reduced to writing.

2. Please provide an assessment whether the change will better facilitate the achievement of the Pilbara electricity objective.

- 19 The ISO concurs with the views of the Coordinator at section 6.3 of the Draft Report.

3. Please indicate if the proposed change will have any implications for your organisation (for example changes to your IT or business systems) and any costs involved in implementing the changes.

- 20 Under the Draft Rules ISO is required to draft, consult in respect of and publish the CPC Procedure and agree/determine a suite of CPC measures.
- 21 The ISO will incur costs associated with these new functions.

4. Please indicate the time required for your organisation to implement the change, should it be accepted as proposed.

- 22 The ISO considers that a draft CPC Procedure could be published for consultation along with the associated draft Access and Connection Procedure within a reasonably short period following the publication of the Coordinator’s final rule change report.