



7 March 2023

Energy Policy Western Australia
Level 1, 66 St Georges Terrace,
Perth, WA 6000

Sent via email to: energymarkets@dmirs.wa.gov.au.

Alinta Energy acknowledges the continued engagement on proposed changes to the Wholesale Electricity Market (WEM) Rules, Gas Services information (GSI) and Pilbara network rules, and appreciates the opportunity to provide feedback to the Compliance and Enforcement WEM Amending Rules and Amending Regulations – Exposure Draft (Exposure Draft).

Alinta Energy demonstrates a positive compliance culture and continues to support an effective enforcement and monitoring environment for the market. Alinta Energy is committed to self-reporting and promptly remedying the root cause of any breaches in addition to imbedding strategies to support compliance and business sustainability.

In response to the Energy Policy WA (EPWA) 'Proposed Changes to the WEM, GSI and Pilbara Regulations – Civil Penalties and Reviewable Decisions (Consultation Paper)' of 18 July 2022, Alinta Energy submitted feedback in response dated 15 August 2022. At this point, there was concern of limited rationale for several policy positions beyond what was outlined in the Taskforce's Monitoring and Compliance Framework in the Wholesale Electricity Market Information Paper from April 2020.

Alinta Energy had outlined its issues and recommendations in response to the Consultation Paper for EPWA's consideration, however has noted that some of these issues are not reflected in the Exposure Draft. Appendix 1 outlines an updated iteration of Alinta Energy positions following release of the Exposure Draft.

While not discussed in previous consultation, Alinta Energy strongly recommends that EPWA implements the Taskforce recommendation for a compliance amnesty period¹ from market start to "enable participants to adjust and become familiar to the new WEM requirements without the threat of compliance action." The Consultation Paper noted that a similar amnesty period was implemented for the introduction of the Balancing Market in 2012.

Since this Taskforce decision, EPWA verbally communicated that an amnesty period will no longer apply, considering the delay to market start has given participants more time to prepare their systems and processes. Alinta Energy considers that although the market start has been delayed, so have the finalisation of key technical specifications WEM Rules and Procedures. This means that despite the delay, participants must still develop and trial key systems and processes within a similar timeframe initially contemplated.

Given this, Alinta Energy considers that an amnesty period remains appropriate, whereby the Australian Energy Market Operator (AEMO) and Economic Regulatory Authority (ERA) will still be required to monitor and record alleged breaches, and Rule Participants to self-report breaches, however, compliance responses will not be issued.

¹ [Monitoring and Compliance Framework in the Wholesale Electricity Market Information Paper 24 April 2020](#)

Alinta Sales Pty Ltd ABN 92 089 531 984

PO Box 8348, Perth BC, WA 6849

T +61 8 9486 3170 **F** +61 8 9266 4688 **W** alintaenergy.com.au

Proposed amendment	Alinta Energy understanding of draft regulations	Implication and Alinta Energy position
<p>Schedule 1</p> <p>Update Schedule 1 so the ERA can apply up to the maximum amount for all Category A, B and C first breaches, subsequent breaches and daily amounts. This replaces the current arrangements where there can be different maximum amounts for different clauses within a category.</p>	<p>Simplified maximum amounts within the categories and allow more discretion to the ERA to apply up to the maximum amount across all Category A, B and C.</p> <p>Maximum amounts have not changed since 2004, despite inflation, and “civil penalties should be sufficiently high as to outweigh the cost of non-compliance.” However, legislative change to increase maximum amounts is not within the project scope.</p>	<p><u>Implication</u></p> <ul style="list-style-type: none"> - Rule participants to be exposed to the maximum category amount for any clause within that category, regardless of the level of risk associated with non-compliance. <p><u>Position</u></p> <ul style="list-style-type: none"> - Alinta Energy understands the maximum civil penalties have been simplified and a revised daily amount introduced. In addition to Schedule 1, a list of penalty provisions have been updated and each clause assigned with a category. - At the TDOWG meeting on Tuesday 28 February 2023, EPWA communicated that updated category amounts were developed following review of the companion rules and an assessment of the impact of a breach. It is proposed the category amounts addressed a range of different factors as explained, however specific detail of these factors was not provided. - Alinta Energy considers that consultation has not provided sufficient justification for why the ERA should have broader discretion to apply up to maximum amount for all clauses within each category. For example, why having differing limits for certain clauses has presented potential issues or may not be fit for purpose in the new WEM. - Alinta Energy suggests that it's reasonable to foresee that certain clauses within a category will never cause the same level of risk (e.g. in terms of health and safety, damage to plant and equipment, system security/reliability, WEM operation, and financial impacts) as others, and therefore that it is appropriate to limit the maximum amount for these less risky clauses.

Alinta Sales Pty Ltd ABN 92 089 531 984

PO Box 8348, Perth BC, WA 6849

T +61 8 9486 3170 **F** +61 8 9266 4688 **W** alintaenergy.com.au

Proposed amendment	Alinta Energy understanding of draft regulations	Implication and Alinta Energy position
		<ul style="list-style-type: none"> - Given this, Alinta Energy suggests that EPWA does not rule out the potential for different maximum amounts for each civil penalty clause within each category until the following information is published: <ul style="list-style-type: none"> o ERA's decisions matrix on how it will determine penalties o The criteria for what must be taken into account when determining civil penalties o How the categories are determined and the rationale of what is allocated to a particular category. <p>Until then, there is not enough information available to industry to determine whether it is reasonable for a clause within a category to have a penalty up to the maximum amount for that category.</p> <p><u>Recommendation</u></p> <ul style="list-style-type: none"> - Require the ERA to publish a framework for maximum penalties.
<p>Schedule 1</p> <p>Specifying daily amounts</p>	<p>Allows the ERA discretion to specify daily amounts for any civil penalty clause, rather than limit which rules may be subject to a daily amount penalty.</p> <p>All categories and clauses have been allocated daily amounts</p>	<p><u>Implication</u></p> <p>Rule participants would be exposed to daily amounts for any civil penalty provision, subject to ERA discretion.</p> <p><u>Position</u></p> <p>Alinta Energy considers that neither the Exposure Draft nor the previous Consultation Paper justifies why all civil penalty provisions should be subject to a daily amount.</p> <p>Alinta Energy understands that the primary purpose of daily amount penalties is to incentivise compliance where a contravention may have not occurred during a discrete period and may be ongoing.</p>

Proposed amendment	Alinta Energy understanding of draft regulations	Implication and Alinta Energy position
		<p>Not having a daily amount to apply in this situation may limit the incentive for the participant to rectify the breach, as the contravention technically occurred once, despite it being ongoing, and can therefore only attract one civil penalty.</p> <p>Alinta Energy suggests that it may not be appropriate to apply daily amounts to scenarios where contraventions will always be for discrete periods, for example where obligations relate to a Trading Interval, as there would already be sufficient scope to apply sufficient penalties and daily amounts may cause excessive penalties.</p> <p>Finally, Alinta Energy considers that there is not sufficient information for industry to consider whether all new civil penalty provisions should be subject to a daily amount. It is difficult to assess the appropriateness of this without being able to review the criteria that the ERA will weigh in deciding whether a daily amount should apply.</p> <p>Given this, Alinta Energy recommends that EPWA does not decide to allow daily amounts for all clauses until this information is published for consultation.</p> <p><u>Recommendation</u></p> <ul style="list-style-type: none"> - Require the ERA to publish a framework for daily penalties.
37.(ba) Redistribution of Financial Penalty to a non-Rule Participant	EPWA has amended the WEM Regulations to allow the ERA to redistribute financial penalty amounts to a party that is not a Rule Participant but that has been adversely impacted by the breach.	<p><u>Implication</u></p> <p>Rule participants may need to compensate non-Rule Participants for any impacts they experience due to a breach of the WEM Rules.</p> <p>ERA would need to decide how to determine this compensation.</p> <p><u>Position</u></p> <p>While reasonable in theory, Alinta Energy questions where this would be appropriate and considers that this may be complex to operationalise.</p>

Proposed amendment	Alinta Energy understanding of draft regulations	Implication and Alinta Energy position
	<p>This seeks to ensure that certain types of impacted parties may also be reimbursed, as and when it is appropriate.</p>	<p>Given this, Alinta Energy suggests that EPWA provide an example of where a breach of a WEM Rule may impact a non-Rule Participant to the extent they require compensation via the WEM Rules and why this would not already be dealt with by existing laws.</p>
<p>Allow ERA to make 'interim orders', obliging a participant to change their behaviour, before they complete their compliance investigation.</p>	<p>"EPWA considers there to be significant value in allowing the ERA to make an order which would intervene in conduct as it is happening, especially if it poses a risk to the market or to power system security and reliability."</p>	<p><u>Implication</u></p> <p>A Rule Participant would be required to change their behaviour (on pain of further breaches), before it is confirmed they have breached the rules.</p> <p><u>Position</u></p> <p>While Alinta Energy perceives potential merit in the ERA being able to make interim orders in very limited circumstances where there is a material and obvious breach, it perceives a risk that some interim orders may not be consistent with procedural fairness and could unduly expose a participant to commercial or operational impacts where it is subsequently found that no breach had occurred.</p> <p>Alinta Energy notes that a participant would have strong incentives to change their behaviour if they were alerted to a potential breach and an investigation, unless they were certain of their compliance, and further interim orders may be redundant.</p> <p>Alinta Energy considers that the consultation paper does not provide adequate justification for what issues interim orders may avoid in the new WEM and suggests that EPWA provide an example relating to the new rules where interim orders would be warranted.</p>
<p>Give ERA the power to require participants to implement 'compliance programs' and 'remedies'.</p>	<p>N/A</p>	<p><u>Position</u></p> <p>While Alinta Energy broadly supports ERA having the ability to require further action following a breach to avoid the risk of future breaches, it considers that EPWA have not provided:</p>

Proposed amendment	Alinta Energy understanding of draft regulations	Implication and Alinta Energy position
		<ul style="list-style-type: none"> - sufficient detail on how these compliance programs or remedies would work and differ from the current 'orders', - the circumstances under which they can be issued, - what limits may be applied to ERA's powers to direct participants, and - what potential issue they are addressing in the current or new WEM Rules. <p><u>Recommendation</u></p> <ul style="list-style-type: none"> - Require the ERA to publish a procedure for compliance programs and remedies, and - Seek stakeholder comment to inform a procedure change process.
2.13.49. The Economic Regulation Authority must keep a public register	To maximise transparency and inform participants what compliance actions the ERA is currently focusing on.	<p><u>Position</u></p> <p>Alinta Energy is pleased that ERA will not publish any identifying information, however requests to be informed of the specific detail that it intends to publish. Alinta Energy understands the ERA will publish the initiation of compliance investigations in the register for the purpose of transparency and reporting to the Minister at the commencement and close of investigations.</p> <p>Alinta Energy considers the register may conflict with the proposed self-report regime, as it could:</p> <ul style="list-style-type: none"> - dilute the benefit of self-reporting, with all investigations being made public regardless of whether the issue was self-reported. - Introduce risk that self-reports will result in reputational damage due to public investigations. undermine the intent of the self-report regime regarding early identification and rectification of compliance issues.

Proposed amendment	Alinta Energy understanding of draft regulations	Implication and Alinta Energy position
		<p>Alinta Energy suggests that these risks are not outweighed by the benefit of more transparency of the compliance actions ERA is focusing on noting that the ERA already notifies participants of their focus in their 6 monthly reports, and that should a breach be found, participants would generally be notified of this via the register only shortly after they would have otherwise been notified, had the investigation initiation been published in the register.</p>

If you would like to discuss further, please contact me at oscar.carlberg@alintaenergy.com.au or on 0409 501 570.

Your sincerely



Oscar Carlberg
Wholesale Regulation Manager