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Mr Jai Thomas – Coordinator of Energy
MS Dora Guzeleva - Director Wholesale Markets
Market Development and Coordination Division
Energy Policy WA
Department of Mines Industry Regulation and Safety
Level 1, 66 St Georges Tce
PERTH WA 6000

By email: EPWA-infro@dmirs.wa.gov.au

Dear Jai, Dora

Submission on proposed draft State Electricity Objective

Thank you for the opportunity to provide comment on the proposed draft State Electricity Objective (**SEO**) that the Government intends to establish through legislation to amend the *Electricity Industry Act 2004* (WA) (**Act**). The Pilbara ISO Co Limited (**ISO**) understands that if such legislation is passed by the WA, the SEO would apply in relation to all matters governed by that Act.

The development of this new objective and its application across the electricity industry throughout the entirety of the State of Western Australia is a matter of keen interest to the ISO. The ISO agrees with the comments made in EPWA's [consultation paper](#)¹ that development of a single SEO to apply across the legal framework governing electricity services in Western Australia is a desirable outcome.

The ISO notes that the proposed draft SEO largely resembles the existing *Pilbara electricity objective* contained in Part 8A of the Act, but with the addition of a new environmental element or "limb" that would also need to be taken into account by the ISO when making certain decisions or performing certain functions.

The ISO agrees with remarks made in the consultation paper that environmental or emissions reduction considerations in the Pilbara are becoming increasingly prominent and that there are potential benefits in having a unified SEO applicable to the entire legal framework governing electricity services in Western Australia. The ISO welcomes the inclusion of an environmental element in the SEO.

There are several matters concerning the proposed SEO on which the ISO makes submissions.

¹ EPWA paper "Electricity Industry Amendment Bill - Consultation on the proposed State Electricity Objective" published 21 February 2023.

The SEO and proposed NEO

The ISO notes comments made in EPWA's consultation paper that the inclusion of the environmental objective "... closely aligns with the approach for the revised National Energy Objective (NEO) currently under consideration for the National Electricity Market." The ISO agrees that the approach taken to the SEO should align with that of the NEO to the extent practicable, while noting that there are some material points of difference between the two in this respect.

For example, the environmental element or "limb" proposed for the NEO will establish tangible links to particular greenhouse gas emissions reduction targets at both State and National levels whereas the corresponding limb of the SEO consists of a general reference to the "environment, including reducing greenhouse gas emissions". The result is that the National energy market bodies² will have a narrower focus when considering and applying the NEO than will the corresponding WA electricity industry governance bodies³ in considering and applying the SEO.

This means that application of the SEO will be a qualitatively different exercise in WA when compared to the more focused scope of proposed NEO, such that WA electricity industry governance bodies will be able to take into account environmental considerations generally (including but not limited to the reduction of greenhouse gas emissions). The ISO assumes that this result reflects a policy preference of the WA Government and is generally supportive of such an approach.

The ISO notes that the outcome will be that WA electricity industry governance bodies will effectively need to exercise a greater level of judgement (and apply a greater level of resources) when considering and applying the SEO than may the National energy governance bodies when considering applying the proposed NEO. This is because application of the SEO will require additional time and effort in identifying and then considering the relevant environmental considerations that may bear upon a particular context or circumstance (including but not limited to the reduction of greenhouse gases) while the attention of the National bodies will be focused on consideration of relevant emissions reduction targets.

For the purposes of this submission this point of difference is of less significance than that discussed below.

Discretion to weigh the limbs of the SEO

For the ISO the material point of difference in the alignment between the SEO and the proposed NEO is the proposed inclusion of subsection (3) in the SEO. That subsection will afford some, but not all, WA electricity industry governance bodies the ability to give such weight to any aspect of the SEO as they may consider appropriate in the circumstances.

² Principally, the Australian Energy Market Commission (AEMC), the Australian Energy Market Operator (AEMO) and the Australian Energy Regulator (AER).

³ Principally the Minister, the Coordinator of Energy, the Authority, the Board, the ISO and the market and system operator of the Southwest interconnected system, AEMO.

The text proposed for subsection (3) will put the Minister, Authority, the Coordinator and the Board on a qualitatively different footing when considering and applying the 3 limbs of the SEO compared to the ISO and the market and system operator of the WA wholesale electricity market (**WEM**) AEMO.

By contrast, the draft NEO does not include a provision equivalent to subsection (3) and puts all National energy market bodies on an equal footing when considering and applying the NEO, including the market and system operator AEMO. A review of the [consultation paper](#) issued by the Commonwealth on incorporating an emissions reduction objective into the NEO makes it clear that the intended policy outcome is that all the National energy market bodies will be on same footing when considering and apply the NEO and that the task itself will include consideration and balancing of each the NEO's 3 limbs. Relevant extracts from the consultation paper that point to this conclusion include, at section 1:

"Ministers' decision to introduce an emissions reduction objective will integrate emissions reduction and energy policy in the national energy laws. The focus of the amendments is to provide greater clarity to Australia's three energy market bodies – the Australian Energy Market Commission (AEMC), the Australian Energy Market Operator (AEMO) and the Australian Energy Regulator (AER) (and a small number of other decision makers under the laws) to explicitly consider emissions reduction in how each market body undertakes its respective powers and functions."

at section 2:

"The energy objectives govern and guide market bodies in their activities under the relevant energy law. The AEMC in exercising its rule-making power can only make and amend the electricity, gas and energy retail rules, or recommend changes to the national energy framework in reviews, if doing so will, or is likely to, contribute to the relevant energy objective.³ The same is true for the AER's performance or exercise of its economic regulatory functions or power. AEMO must have regard to the objectives in its market operations functions and planning processes (e.g. the Electricity Statement of Opportunities (ESOO), Gas Statement of Opportunities (GSOO) and Integrated System Plan (ISP))."

and section 4:

"However, as outlined in this paper, the intent of including an emissions reduction component that is additional to the existing components of the energy objectives is that emissions reduction would become a relevant factor that market bodies must consider and balance against the other components of the energy objectives, such that at an overall level, the energy objectives are achieved to the greatest degree."

The draft SEO will not achieve the same outcome in WA.

In WA, the Minister, the Coordinator, the Economic Regulation Authority and the [Electricity Review] Board will have a legislated capacity to weigh and apply the different components of the SEO in a way that others, including the ISO and AEMO will not.

The manner in which bodies like ISO are able to consider and apply the SEO is left unstated. This will leave the ISO in particular (and AEMO, although to a lesser extent) in a much less certain and potentially difficult position when considering and applying the SEO. For reasons stated below regarding the nature and extent the ISO's functions that touch upon the *Pilbara electricity objective*, the ISO does not consider this to be a desirable outcome.

The issue will be particularly acute for the ISO in a circumstance where, for example, in considering the limbs of the SEO in the exercise of one of its functions the ISO might consider it appropriate to give greater weight to one element over another. Would the ISO have a discretion to do that under the text of the SEO as proposed or not? Given the absence of a reference to the ISO in subsection (3) an inference could be drawn that it does not. As best it is not at all clear that the ISO would have such an ability.

The reason this is of particular concern to the ISO is because the *Pilbara electricity objective* permeates the decision making and performance of functions by the ISO under the *Pilbara Networks Rules* to a much greater extent than does the Wholesale Market Objective for AEMO. While some of the ISO's functions that require consideration and or application of the *Pilbara electricity objective* have a level of correspondence to some of AEMO's functions under the *market rules (WEM Rules)* (that require AEMO to consider and or apply the *Wholesale Market Objective*,⁴) the extent of the ISO's obligation is qualitatively different (greater) than that of AEMO's in this respect.

A list of ISO functions and decisions under the *Pilbara Networks Rules* that require consideration and or application of the *Pilbara electricity objective* is set out in **attachment A** to this submission. Of particular note is the extent of the ISO's review related functions. That is, the ISO's responsibility for conducting numerous reviews into aspects of the regime under the *Pilbara Network Rules* against the *Pilbara electricity objective* or their effectiveness in meeting or promoting that objective and so on. AEMO does not have corresponding review related functions requiring consideration of the *Wholesale Electricity Objective* in the WEM. Review related functions of this kind are performed by either the Coordinator or the Authority.

The ISO maintains that the nature and extent of the ISO's obligations in relation to the *Pilbara electricity objective* under the *Pilbara Network Rules*, particularly its review related functions, align somewhat with the character of some of the Coordinator and the Authority in their corresponding responsibilities.

In summary, the ISO submits that it should be put on the same footing as the Coordinator, Minister, Authority and Board in the exercise of its functions connected with the SEO. The ability for the ISO to weigh the different limbs of the SEO will be particularly important for the ISO's review related functions.

⁴ See the attachment, which identifies (i) the functions of the ISO under the PNR that require it to have regard to and or apply the *Pilbara electricity objective* in some manner and (ii) the functions of the ISO and of AEMO (under the WEM Rules) that have a level of correspondence (similarity).

The ISO submits that if a provision like subsection (3) is to be included in the SEO, the ISO at least should be included in the list of electricity industry governance bodies it identifies before a *Bill* is finalised for introduction into the Parliament.

Without including the ISO in the list of persons mentioned in subsection (3) of the SEO, the ISO will be left in, at best, an uncertain and, at worst a difficult or impractical position, in attempting to ensure that it is properly considering and applying the elements of the SEO the performance of its functions.

Clarity on regulation 4 matters

There is a further matter on which the ISO considers clarification is desirable. In accordance with s119(3) of the Act, a body who performs a function under Part 8A of the Act must have regard to the matters listed in regulation 4 of the *Electricity Industry (Pilbara Networks) Regulations 2021* in determining whether the performance of the function meeting the *Pilbara electricity objective*. The 'regulation 4' matters as they have sometimes been called are of value to Pilbara resource industry participants in confirming that decisions made for and in relation to the Pilbara electricity industry must have regard to the unique characteristics of the region.

Neither the proposed text of the SEO nor the consultation paper provide clarity on whether a body that is exercising a function under Part 8A will continue to need to have regard to the regulation 4 matters when determining the whether the performance of a meets the SEO.

The ISO strongly recommends that the regulation 4 factors continue to apply when an electricity industry governance body is considering and applying the SEO (and assumes that this is in fact the unstated policy intent). The ISO submits that an amendment should be included in any *Bill* that enacts the SEO to provide clarity in this respect. This could be done, for example, ensuring that the power in s119(3) of the Act [to create "have regard to" factors in regulations or the *Pilbara Network Rules* or the PNAC)] will continue to apply when a body who performs a function in the Pilbara context is determining whether performance of a function meets the SEO.

Finally, if a SEO is passed by the WA Parliament, the ISO notes that some form of legislative solution will be needed to ensure that all references to the Pilbara electricity objective in the *Pilbara Network Rules* are to be taken to be a reference to the SEO (or the *Pilbara Network Rules* themselves will need to be amended to substitute all references to the *Pilbara electricity objective* with the SEO).

Yours sincerely

James Campbell-Everden
Executive Officer – Pilbara ISOCO

Pilbara electricity objective and ISO functions & decisions

Orange shading identifies ISO review function

Item no	PNR rule ref	ISO obligation	AEMO corresponding obligation in WEM Rules (if any)
1.	57(1)	The ISO must as soon as practicable determine an application for an exemption from one or more requirements of these rules - having regard to the effect the proposed exemption, if granted, will or might have on security, reliability, the operation and objectives of these rules (including the system security objective and the objectives of Chapters and Subchapters), and the Pilbara electricity objective	2. 28.16B exemptions from registration for + 10MW generation system
2.	64(6)	When consulted by a registered NSP proposing to exempt a person from a requirement of the harmonised technical rules, the ISO must as soon as practicable, ... determine, and advise the registered NSP — (a) whether the exemption is or is not likely to cause or contribute to any adverse impact on security, reliability or the Pilbara electricity objective;	
3.	75(4)	A procedure must not contain anything which is inconsistent with these rules, the regulations, the Act or the Pilbara electricity objective	2.9.3. WEM Procedures must be consistent with wholesale market objectives
4.	121(2)	The power system modelling procedure to be developed by ISO may specify uniform standards, formats and assumptions to be used in network models and all other models developed under these rules (including the harmonised technical rules), sufficient to ensure that all models integrate effectively and operate together efficiently and to a GEIP standard, in order to facilitate the operation of these rules and promote the Pilbara electricity objective	
5.	122(1)	fees to be consistent with Pilbara electricity objective	
6.	170	In performing their functions under Subchapter 7.3 and Subchapter 7.4, the ISO ... must (c) have regard to the Pilbara electricity objective and the system security objective;	
7.	178	From time to time, and at least once in every five year period starting from the rules commencement date, the ISO must conduct a review of the processes set out in this Subchapter 7.3 and Subchapter 7.4 [system coordination and outages] against the Pilbara electricity objective.	
8.	199	In procuring ESS the ISO is to achieve the primary ESS objective in a way that achieves lowest cost having regard to the Pilbara electricity objective,	

9.	231	ISO to determine administered price and administered penalty price – having regard to the Pilbara electricity objective.	
10.	247(1)	From time to time the ISO may, and at least once every 5 years the ISO must, conduct a review of the arrangements in and under this Chapter 8 [essential system services, balancing and settlement], their effectiveness and efficiency in achieving the Pilbara electricity objective, the system security objective and the objective in rule 199 [ESS objectives]	
11.	256(2)	The constraint rules developed by the ISO must ... (c) otherwise be developed in accordance with GEIP and the Pilbara electricity objective.	2.27.18 AEMO may ..review the effectiveness of the processes used by a Network Operator for Loss Factor calculation in meeting the Wholesale Market Objectives 2.27A.9 – WEM Objectives to be taken into account by AEMO in formulating Constraint Equations
12.	270(3)	In assessing a new connection’s impact on security and reliability ISO must have regard to the Pilbara electricity objective.	
13.	276 & 286	From time to time, on the first occasion within 2 years after the rules commencement date and thereafter at least once every 5 years, the ISO must conduct a review of the processes and reports set out in this Subchapter 10.1 against the objective in rule 276 and the Pilbara electricity objective, and publish a report on the subject	
14.	294	ISO’s use of confidential information in performance of its functions to be in accordance with Pilbara electricity objective	7. 6A-10 AEMO may only decline to approve the confidential procedure [relating to commercially sensitive information of Synergy] or an amendment to that procedure, if that document is inconsistent with the WEM Rules or the market objectives
15.	316	confidentiality of compliance matters – confidential information can be disclosed if necessary or convenient to otherwise progress the Pilbara electricity objective	
16.	369	reporting on effectiveness of the interconnected Pilbara networks and Part 8A regime in maintaining and improving security and reliability and the Pilbara electricity objective.	
17.	A3.9	Before giving notice of loss of technical compliance legacy arrangements ISO must ... (c) consider the balance between the cost to the facility’s controller of undertaking the remedial or mitigating work, against the resultant benefit in terms of security, reliability and the Pilbara electricity objective.	

18.	A3.12	<p>Before giving notice of loss of legacy arrangements for security/reliability reasons the ISO ...</p> <p>(c) must consider the balance between the cost to the facility's controller of undertaking the work required to make the facility compliant with the harmonised technical rules, against the resultant benefit in terms of security, reliability and the Pilbara electricity objective</p>	
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