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Energy Policy WA

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Proposed Changes to the Pilbara, GSI and ESM Regulations – transitional rule-making powers and civil penalties

Alinta Energy appreciates the opportunity to provide feedback on the proposed amendments to the *Electricity Industry (Pilbara Networks) Regulations 2021* (Pilbara Regulations), *Gas Services Information (GSI) Regulations 2012* (GSI Regulations), and the *Electricity Industry (Electricity System and Market) Regulations 2004* (ESM Regulations) that seek to:

- re-introduce temporary rule-making powers to allow the Minister to make changes to individual GSI Rules or Pilbara Network Rules, without having to repeal and replace the entire set of rules; and
- extend the civil penalty framework to the specified ESM Rule clauses.

We provide the following comments for EPWA's consideration.

Temporary Rule Making Powers

Alinta Energy does not consider that the consultation paper has made an adequate case for re-instating the Minister's temporary rule-making powers.

While indicating the temporary rule making powers are necessary to manage the extensive rule changes anticipated as a result of the:

- Evolution of the Pilbara Networks Rules Project; and
- Review of the Gas Services Information (GSI) Rules,

it does not set out why the proposed amendments will provide for better outcomes. As the proposed temporary rule making arrangements will enable the Minister to make changes to individual GSI Rules or Pilbara Network Rules, without having to repeal and replace the entire set of rules, we are concerned that using the temporary powers to effect substantial rule changes will result in:

- Reduced certainty and predictability - the temporary powers allow the Minister to amend rules directly, which may bypass the usual rule change process involving stakeholder consultation and procedural safeguards.
- Risk of rushed or poorly integrated reforms - while consultation is expected, the expedited nature of these powers may lead to changes that are not fully aligned with operational realities or stakeholder needs.
- Coordination challenges - staged implementation of rule changes may create transitional inconsistencies.

We recommend that further justification of the temporary Rule Making Powers is provided for consideration before the proposal is enacted.

Civil Penalty Framework – Additional Category C Penalty Provisions

We generally support the civil penalty framework and its role in maintaining market integrity, but its scope must remain proportionate. Applying penalties too broadly, especially to low-risk administrative or technical breaches, can create unnecessary compliance burdens and discourage innovation. A balanced approach that targets the more serious infractions is essential.

We are concerned that the proposed expansion of the Category C provisions may go beyond what is reasonably necessary, capturing obligations better addressed through operational protocols, system controls, guidance, or education.

The Consultation Paper does not present a holistic assessment of the Civil Penalty Framework and offers limited justification for the inclusion of the additional nineteen Category C civil penalty clauses. The rationale provided is largely generalised and lacks the necessary detail to assess the appropriateness of these provisions. Specifically, the paper does not adequately address:

- the severity and likelihood of harm resulting from non-compliance;
- whether existing mechanisms already mitigate the identified risks; and
- the proportionality of the proposed penalties relative to the potential impact.

Given the limited information available, it is difficult to undertake a thorough evaluation of each proposed clause. Nonetheless, we have identified several provisions in Appendix A where the application of a Category C penalty may be disproportionate or insufficiently justified.

Please refer to Appendix A for specific feedback in relation to the proposed Category C penalty clauses.

Reviewable Decision Request

In addition to the changes proposed by EPWA, we request that consideration be given to amending Section 1 of Schedule 2 of the ESM Regulations to enable the following to be classified as Reviewable decisions:

- assignment of Certified Reserve Capacity (CRC) to a Facility (clause 4.9.9);
- Network Access Quantities and Indicative Network Access Quantities for Facilities (clause 4.15.1);
- the allocation of Capacity Credits to a Facility (clause 4.20.5A(a)).

Assignment of Certified Reserve Capacity

The assignment of Certified Reserve Capacity (CRC) to a Facility should be a reviewable decision under the *Electricity Industry Act 2004* because it has significant financial and operational implications for market participants in the WEM. The CRC determines the extent to which a Facility can participate in the Reserve Capacity Mechanism and receive capacity payments, which are a critical revenue stream. Given the complexity of the certification process, outlined in the ESM Rules and associated procedures, there is a risk of administrative error, misinterpretation of technical data, or inconsistent application of criteria.

Allowing affected parties to seek a formal review of CRC decisions would enhance procedural fairness, improve transparency, ensure accountability in AEMO's decision-making, and align with the broader State Electricity Objective to promote efficient investment in and the efficient operation and use of electricity services for the long-term interests of consumers.

Network Access Quantities

The outcomes from the application of the Network Access Quantity (NAQ) model in assigning capacity credits for a Reserve Capacity Cycle should also be a reviewable decision under the *Electricity Industry Act 2004* because of the direct and potential material impact on Market Participants' access to revenue and their ability to participate in the WEM. The NAQ model, introduced as part of the transition to a constrained network access regime, fundamentally alters how capacity credits are allocated by linking them to a facility's physical access to the network. This shift introduces new complexities and potential for disputes, particularly where affected parties may perceive the model's application as inconsistent or opaque.

Establishing these outcomes as reviewable would enhance transparency, promote procedural fairness, and provide a formal avenue for redress, thereby supporting the integrity and credibility of the Reserve Capacity Mechanism as well as the broader market framework.

Allocation of Capacity Credits

AEMO's decisions regarding the assignment of capacity credits for a capacity cycle should also be considered a reviewable decision under the *Electricity Industry Act 2004* because it directly affects the commercial viability and operational planning of Market Participants in the WEM. Capacity Credits are central to ensuring adequate generation capacity and are tied to financial incentives and obligations. Given their significant impact on Market Participants revenue and the viability of generation projects, high levels of transparency and accountability in their allocation is essential.

Given the commercial significance of these decisions and the potential for administrative or technical errors, affected parties should be able to request a review of these decisions. This approach would enhance procedural fairness, promote accountability in AEMO's decision-making, and align with the State Electricity Objective to promote efficient investment in and the efficient operation and use of electricity services for the long-term interests of consumers.

Thank you for considering our submission. If you would like to discuss our submission further, please contact me at Jean.Mileto@alintaenergy.com.au or on 0437 014 596.

Yours sincerely,

Jean Mileto

Regulation and Compliance Specialist

APPENDIX A

Section Heading	Clause	Issue
Registration Process	2.28.7	<ul style="list-style-type: none"> Facilities in the 5–10 MW range are relatively small contributors to overall system capacity. While registration is important for visibility, failure to register does not inherently affect AEMO's ability to manage power system security and reliability Non-compliance with this clause may stem from lack of awareness rather than deliberate avoidance. A Category A or B classification may still deter non-compliance while being more proportionate to the risk.
	2.30.5A	<ul style="list-style-type: none"> This clause applies only under specific conditions, i.e. when a single credible contingency event could disconnect multiple facilities AEMO and network operators typically assess contingency risks during connection and registration processes. These safeguards already help ensure facilities are appropriately aggregated or managed, reducing the need for punitive enforcement. Market Participants may not always be aware of the need to aggregate unless explicitly advised during registration or planning. This obligation could be better enforced through clearer guidance, automated checks, or AEMO-led coordination rather than high-level penalties. A Category B classification would still deter non-compliance while being more proportionate to the nature of the obligation.
	2.31.15	<ul style="list-style-type: none"> This clause deals with procedural compliance following deregistration. While important, it is not inherently linked to adverse market impacts. Breaches are likely to be isolated and easily detectable by AEMO's systems, making enforcement straightforward without needing severe penalties. The risk of significant market impact from a deregistered participant continuing to trade briefly is low, especially if the participant is not actively bidding or dispatching energy. Compliance with this clause could be better managed and enforced through operational and/or system controls (e.g. revocation of access). A Category A or B classification would still deter non-compliance while being more proportionate to the risk and impact.
SCADA, Communication and Monitoring Equipment	2.36A.4	<ul style="list-style-type: none"> This clause covers compliance with technical procedures, which may involve complex equipment configurations and software interactions. Breaches may result from inadvertent technical faults or delays in system upgrades, rather than deliberate misconduct or market manipulation. AEMO already monitors system integration and can identify non-compliance through performance metrics or communication failures. These issues can be effectively resolved through operational coordination. Education, support, and system alerts may be more effective than financial penalties in achieving compliance. A Category B classification would still incentivize compliance while being more proportionate to the risk and impact.
System Restart	3.7.22	<ul style="list-style-type: none"> This clause is framed as a best-efforts obligation, not a strict performance requirement. Penalising a Network Operator for failing to meet a "reasonable endeavours" standard, especially under emergency conditions, would be unreasonable. System restart capability is typically addressed through planning, testing, and regulatory oversight.

Bilateral Trade Declaration	4.14.3	<ul style="list-style-type: none"> • This clause deals with the nomination of all CRC with respect to a Facility subject to an NCESS Contract, which is a procedural step in the Reserve Capacity Mechanism. • While important, a failure to nominate all CRC does not necessarily result in an adverse market impact. • NCESS contracts are binding agreements with specific terms and conditions. Non-compliance with CRC nomination could be addressed through contract enforcement rather than regulatory penalties.
Early Certification of Reserve Capacity	4.28C.12(a)	<ul style="list-style-type: none"> • Reserve Capacity Security is a financial guarantee, and failure to provide it can trigger market consequences. These mechanisms are effective deterrents and enforcement tools. • Non-payment or late payment of Reserve Capacity Security is best addressed through financial enforcement mechanisms, such as interest charges, suspension, or forfeiture, rather than regulatory penalties.
RCM Limit Advice and RCM Constraint Equations	4.4B.1	<ul style="list-style-type: none"> • This clause relates to the provision of planning advice. • While important, failure to provide timely advice does not directly affect AEMO's ability to manage power system security and reliability in the short term. • AEMO already engage with Network Operators through structured planning processes, which offers opportunities to identify and rectify gaps in RCM advice. • The quality and timing of RCM Limit Advice can be improved through clearer procedural guidance, templates, and engagement.
Registration and Certification	5.2A.2	<ul style="list-style-type: none"> • NCESS contracts are governed by specific terms and performance obligations. Non-compliance can be addressed through contractual enforcement mechanisms, such as withholding payments or termination. • Regulatory penalties may duplicate or conflict with these mechanisms.
Standing STEM Submission Timetable and Process	6.3C.9	<ul style="list-style-type: none"> • The clause deals with ensuring that offers in the STEM reflect actual capability, which is important but not likely to cause adverse market impact. • AEMO has mechanisms available to validate and correct submissions as well as manage discrepancies. • Ensuring accurate STEM submissions is often a matter of training, system integration, and procedural clarity – which are better addressed through guidance, alerts, and automated validation
Real Time Market Submissions	7.4.2	<ul style="list-style-type: none"> • This clause requires Market Participants to make reasonable endeavours to ensure that their RTM Submissions accurately reflect the parameters specified. • The clause is framed in the context of a 'best-efforts' obligation, not as a strict requirement. • Penalising Market Participants for failing to meet a "reasonable endeavours" standard, especially in dynamic operational environments, is likely to be difficult.
	7.4.5	<ul style="list-style-type: none"> • This clause involves forecasting and submitting accurate availability and pricing data for FCESS, which is inherently complex and can be subject to change. • Errors or discrepancies may arise from technical limitations, evolving outage conditions, or forecasting uncertainty—not necessarily from deliberate misconduct.
Scarcity and Intervention	7.7.11	<ul style="list-style-type: none"> • While compliance with AEMO directions is critical, this clause is already supported by operational enforcement mechanisms. • Non-compliance can be addressed through immediate market interventions or suspension, making a high-level penalty potentially redundant. • A Category B penalty would still deter non-compliance while allowing for context-sensitive enforcement.

Commitment	7.9.2 & 7.9.3	<ul style="list-style-type: none"> • These are procedural obligations related to informing AEMO of synchronisation/desynchronisation timing. • Breaches are likely to be administrative or timing-related, with limited impacts on AEMO's ability to manage power system security and reliability. • AEMO can detect synchronisation through system telemetry, reducing the risk of harm. • The risk of significant market impact is low, especially if the facility is not actively dispatched • A Category A or B penalty would be more proportionate.
Compliance with Dispatch Instructions	7.10.4	<ul style="list-style-type: none"> • Deviations may occur due to technical limitations or unforeseen conditions, not necessarily intentional misconduct. • The clause includes exceptions, increasing the complexity of enforcement. • A Category B penalty may be more appropriate and would still deter improper deviations.
	7.10.6	<ul style="list-style-type: none"> • This clause overlaps with 7.10.4. • Enforcement should consider intent and context, especially when deviations are minor or corrective. • A Category B penalty may be more appropriate.
	7.10.19	<ul style="list-style-type: none"> • This clause requires facilities to respond to Regulation Raise/Lower instructions, subject to ramp rate limits. • Non-compliance may result from technical constraints rather than deliberate avoidance. • AEMO can manage shortfalls operationally, mitigating the risk to power system security and reliability. • Penalties should reflect whether the breach was avoidable. • A Category B penalty may be more proportionate and effective.