



22 July 2016

The Hon. Kate Doust
 Chair, Standing Committee on Uniform Legislation and Statutes Review
 Via email: unileg@parliament.wa.gov.au

Dear Ms Doust

**RE: NEW INQUIRY INTO ENERGY LEGISLATION AMENDMENT AND REPEAL BILL 2016,
 NATIONAL ELECTRICITY (WESTERN AUSTRALIA) BILL 2016 AND NATIONAL GAS ACCESS
 (WA) AMENDMENT BILL 2016**

Alinta Energy (Alinta) welcomes the opportunity to provide a response to the Standing Committee on Uniform Legislation and Statutes Review (the Committee) regarding the following three Bills which it is currently considering:

- Energy Legislation Amendment and Repeal Bill 2016
- National Electricity (Western Australia) Bill 2016
- National Gas Access (WA) Amendment Bill 2016

We understand that the three Bills form an integral part of the progression of network reforms under the State Government's Electricity Market Review (EMR). Alinta is generally supportive of the reforms being progressed by the EMR which seek to promote the review's objectives of encouraging greater private sector investment, reducing the costs of production and supply of electricity and reducing government exposure to energy market risks in the South West Interconnected System (SWIS).

Alinta is a generator and retailer of electricity and gas in Western Australia and the eastern states markets. Our generation portfolio in the SWIS includes the Pinjarra and Wagerup open cycle gas turbines and Walkaway Windfarm. We also retail electricity to approximately 29% of the contestable market in the SWIS (by volume) and have 590,000 gas customers.

Alinta's operations in the SWIS as both a generator and retailer are supported by contracts with Western Power for network access. These network access contracts were negotiated and agreed in good faith and included Alinta as the access seeker paying for any necessary network upgrades as required by Western Power at the time. Furthermore, the terms and conditions of these contracts, including the allocation of rights and liabilities within the contracts, formed the basis of Alinta's critical long term investment decisions in respect of its generation portfolio and the conduct of its business.

The Energy Legislation Amendment and Repeal Bill 2016 (the Bill) includes a significant change to the basic premise of and underlying commercial rationale for the contracts that Alinta has with Western Power for network access. Specifically, the Bill enables a constrained network access model to be implemented in the SWIS whereas to date network access has been provided on a generally unconstrained basis, as is reflected in Alinta's existing network access contracts.

The adoption of a constrained network will have significant financial implications to Alinta's generation investments as it is anticipated that overtime network constraints will result in restrictions in our ability to supply energy (and capacity) to customers on occasions. For example if network constraints arise in the area of the network surrounding Alinta's Pinjarra generators in the future then the energy from those generation investments will not be able to be provided to the market at times when those constraints are occurring. This may result in a perverse outcome where Alinta's efficient and low cost generation is constrained off in favour of more expensive and/or high emissions generation.

Other existing investments will also be impacted overtime and it is expected that for some investments the extent of the financial implications of a constrained network will be significant, particularly if they are situated in a part of the network which is anticipated to be heavily constrained.

While Alinta appreciates that the adoption of a constrained network access model in the SWIS will ensure consistency with the approach adopted in the National Electricity Market (NEM), we are particularly concerned that section 8A of the Bill expressly removes Western Power's immunity such that it cannot be liable under any network access contracts for any loss (direct or indirect) associated with the implementation of a constrained network access model that is incurred by its customers¹.

Alinta is concerned about the legislative power contained in the Bill that removes the contractually agreed allocation of rights and liabilities between parties and considers this represents a significant sovereign risk to existing investors who in good faith entered into network access arrangements with Western Power. Furthermore, in light of the outcomes sought to be achieved and the impact of such outcomes, it is highly concerning that the Bill is being progressed in the absence of any clarity around compensation arrangements having been provided.

It is understood that the Electricity Market Review will shortly be consulting with impacted parties on potential compensation arrangements concerning the removal of unconstrained access rights, however to date there has been no transparency as to the circumstances under which compensation is intended to be paid². Likewise the results of the modelling commissioned by the Public Utilities Office (PUO) to assist in understanding the potential impacts of the constrained network has not been made available to existing participants. As a result it is unclear:

- Firstly, what the impacts to investors will be of a constrained network from both an energy and capacity market perspective; and
- Secondly, whether affected investors will be appropriately compensated for any losses incurred.

Alinta recommends to the Committee that to address the current significant sovereign risk, the Bill should incorporate a requirement for compensation arrangements to be outlined in subordinate legislation.

The subordinate legislation should be expressly required to cover the following matters:

- The criteria for compensation payments and/or grandfathering of existing rights. As is understood to be the intent of the PUO, this should be consulted on with industry prior to incorporation in the legislation;
- That any grandfathering arrangements will automatically apply where the outlined criteria is met by an existing generator;
- That investors who consider they meet the criteria for compensation will be able to make a compensation application and that an assessment of their application will be undertaken by an independent party;
- That where an assessment has been made that compensation is appropriate then a formal negotiation process between State Government (including Western Power) and existing investors will take place on an equitable and proper basis;

Prior to any negotiation process taking place, there should be full transparency of the anticipated impacts on the investor of a constrained network from both an energy and capacity market perspective. This includes the Government making available details of the anticipated market design changes around how capacity will be certified and energy will be dispatched in the new SWIS market arrangements. This will ensure existing investors are

¹ Similar provisions were not required in the NEM as a constrained network access model has always been generally adopted.

² Alinta understands that the Steering Committee for the Electricity Market Review will release shortly its views on when compensation should be made available.

fully informed and can therefore ensure they are fully compensated for any losses as a result of the change.

- That a formal review process can be enacted by participants if they don't consider the independent party has appropriately assessed their application.

We consider that the incorporation of the above outlined requirements for compensation and/or grandfathering arrangements to be outlined in subordinate legislation will go some way towards providing greater certainty to existing investors that a mechanism for compensation will be put in place which will enable them to be fully compensated for the removal of their unconstrained network access.

If you have any questions concerning this submission please contact Michelle Shepherd, General Manager Regulatory and Government Affairs, on 9486 3762 or at:
michelle.shepherd@alintaenergy.com.au.

Yours sincerely



Daniel McClelland
Executive Director, Corporate Services
Alinta Energy