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WESTERN
AUSTRALIAN
GOVERNMENT

Gazette

ISSN 1448-949X

PRINT POST APPROVED PP665002/00041

6487



PERTH, FRIDAY, 27 DECEMBER 2013 No. 242 SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 12:45 PM

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ELECTRICITY CORPORATIONS ACT 2005

**ELECTRICITY CORPORATIONS
(ELECTRICITY GENERATION AND
RETAIL CORPORATION)
REGULATIONS 2013**

Western Australia

Electricity Corporations (Electricity Generation and Retail Corporation) Regulations 2013

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Electricity Corporations Act 2005

Electricity Corporations (Electricity Generation and Retail Corporation) Regulations 2013

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Electricity Corporations (Electricity Generation and Retail Corporation) Regulations 2013*.

2. Commencement

These regulations come into operation as follows —

- (a) Part 1 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Electricity Corporations Amendment Act 2013* section 6 comes into operation.

3. Terms used

In these regulations, unless the contrary intention appears —

AASB 8 means Australian Accounting Standard AASB 8 *Operating Segments*, made under the Corporations Act section 334, as amended from time to time;

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applicable provision means a provision of another written law, segregation arrangements, or market rules made under the *Electricity Industry Act 2004* Part 9, that is expressed to apply to the foundation transfer price mechanism;

audit has the meaning given in the *Auditor General Act 2006* section 4(1);

Authority means the Economic Regulation Authority;

Board means the Western Australian Electricity Review Board established by the *Energy Arbitration and Review Act 1998* section 50(1);

civil penalty decision means a decision of the Authority under regulation 38(1) to impose a civil penalty;

civil penalty provision means a provision specified in Schedule 1;

contestable customer means a customer other than a customer of a class prescribed under section 54(4) of the Act for the purposes of section 52(2) of the Act;

customer has the meaning given in the *Electricity Industry Act 2004* section 3;

EGRC means the Electricity Generation and Retail Corporation;

EGRC business unit means —

- (a) the generation business unit; or
- (b) the wholesale business unit; or
- (c) the retail business unit; or
- (d) the part of the EGRC that conducts the operations constituting any additional segment approved under regulation 5(2);

EGRC regulatory scheme means the following —

- (a) these regulations;
- (b) segregation arrangements;
- (c) wholesale arrangements;

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foundation transfer price, for a supply of electricity referred to in regulation 9(2)(a), means the price determined for that supply in accordance with the foundation transfer price mechanism;

foundation transfer price mechanism means the foundation transfer price mechanism given to the Minister under regulation 11(1), or any replacement foundation transfer price mechanism given to the Minister under regulation 11(3), as in force from time to time;

generation business has the meaning given in regulation 5(1)(a);

generation business unit means the part of the EGRC that conducts the generation business;

generation competitor means a person, other than the EGRC, who is, or is likely to be, required to hold a generation licence (as defined in the *Electricity Industry Act 2004* section 3) or is exempt under section 8 of that Act from the requirement to hold such a licence;

generation operations means operations involving the construction or operation of generating works (as defined in the *Electricity Industry Act 2004* section 3);

generation restricted information means information relating to a generation competitor that —

- (a) is obtained by or provided to wholesale staff in the course of the conduct of the wholesale business; and
- (b) might reasonably be expected to materially adversely affect the commercial interests of the generation competitor if disclosed to generation staff,

unless the information also relates to generating works (as defined in the *Electricity Industry Act 2004* section 3) owned, controlled or operated by the EGRC;

generation staff means staff, other than shared services staff, who are involved in the conduct of the generation business;

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member of staff has the meaning given in section 3(1) of the Act;

merger time has the meaning given in section 194 of the Act;

new contestable customer arrangement has the meaning given in regulation 4;

restricted information means generation restricted information or retail restricted information;

retail business has the meaning given in regulation 5(1)(c);

retail business unit means the part of the EGRC that conducts the retail business;

retail competitor means a person, other than the EGRC, who is, or is likely to be, required to hold a retail licence (as defined in the *Electricity Industry Act 2004* section 3) or is exempt under section 8 of that Act from the requirement to hold such a licence;

retail operations means operations involving the pricing, sale and marketing of electricity to customers served by the South West interconnected system;

retail restricted information means information relating to a retail competitor that —

- (a) is obtained by or provided to wholesale staff in the course of the conduct of the wholesale business; and
- (b) might reasonably be expected to materially adversely affect the commercial interests of the retail competitor if disclosed to retail staff;

retail staff means staff, other than shared services staff, who are involved in the conduct of the retail business;

segregation arrangements means arrangements approved under regulation 18(1) as in force from time to time;

shared services operations means —

- (a) operations relating to the following —
 - (i) corporate planning and strategy;

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- (ii) organisational development;
 - (iii) accounting, financial and legal matters;
 - (iv) human resources;
 - (v) information technology support;
 - (vi) regulatory and compliance matters;
 - (vii) communications;
 - (viii) billing;
 - (ix) record keeping;
- and

- (b) any other operations (excluding generation operations, wholesale operations and retail operations) undertaken in connection with 2 or more EGRC business units;

shared services staff means staff involved in the conduct of shared services operations;

staff means members of staff of the EGRC, agents of the EGRC or persons engaged by the EGRC under contracts for services;

wholesale arrangements means arrangements approved under regulation 26(1) as in force from time to time;

wholesale business has the meaning given in regulation 5(1)(b);

wholesale business unit means the part of the EGRC that conducts the wholesale business;

wholesale operations means —

- (a) operations involving the wholesale acquisition or supply of electricity (including pricing in respect of such acquisition or supply); or
- (b) operations involving the acquisition or supply of wholesale products (including pricing in respect of such acquisition or supply);

wholesale products has the meaning given in section 38(1)(b) of the Act;

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wholesale staff means staff, other than shared services staff, who are involved in the conduct of the wholesale business.

4. New contestable customer arrangement

- (1) For the purposes of these regulations, a ***new contestable customer arrangement*** is an arrangement between the EGRC and a contestable customer that —
 - (a) imposes a legal obligation on the EGRC to supply electricity to the contestable customer on a retail basis; and
 - (b) becomes legally binding on the EGRC after the merger time.
- (2) Despite subregulation (1), an arrangement is not a new contestable customer arrangement if —
 - (a) the arrangement becomes legally binding on the EGRC after the merger time as a result of the contestable customer accepting, on or before 31 March 2014 and without amendment, an offer for the retail supply of electricity that was made by the EGRC to the contestable customer before the merger time; or
 - (b) the arrangement is for the supply of electricity to the contestable customer at a charge determined in accordance with the *Energy Operators (Electricity Generation and Retail Corporation) (Charges) By-laws 2006*.
- (3) If an arrangement for the retail supply of electricity is legally binding on the EGRC at the merger time, but is varied by agreement after the merger time, subregulation (1)(b) applies as if the arrangement became legally binding on the EGRC when the variation took effect.

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Segregation **Part 2**
Segmentation of EGRC operations **Division 1**
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Part 2 — Segregation

Division 1 — Segmentation of EGRC operations

5. Division of EGRC operations into segments

- (1) The EGRC must divide its operations into the following segments —
 - (a) a segment (the ***generation business***) comprising —
 - (i) generation operations; and
 - (ii) other operations as determined by the EGRC from time to time;
 - (b) a segment (the ***wholesale business***) comprising —
 - (i) wholesale operations; and
 - (ii) other operations as determined by the EGRC from time to time;
 - (c) a segment (the ***retail business***) comprising —
 - (i) retail operations; and
 - (ii) other operations as determined by the EGRC from time to time;
 - (d) a segment comprising shared services operations;
 - (e) any additional segment or segments approved under subregulation (2).
- (2) The Minister may, by instrument published in the *Gazette*, approve one or more segments in addition to the segments referred to in subregulation (1)(a) to (d).
- (3) The Minister must cause a copy of an instrument under subregulation (2) to be laid before each House of Parliament within 10 sitting days of that House after the day on which the instrument is published in the *Gazette*.

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Part 2 Segregation

Division 2 Financial administration

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- (4) The EGRC must keep a record of the details of the segments required under subregulation (1) and of any changes to those segments.

Division 2 — Financial administration

Subdivision 1 — Reporting

6. Quarterly statements of financial performance

- (1) The EGRC must ensure that each quarterly report under section 106 of the Act includes a separate statement of financial performance for each EGRC business unit for the quarter to which the report relates.
- (2) The EGRC must ensure that the separate statements of financial performance are prepared in accordance with AASB 8.

7. Application of AASB 8

- (1) In this regulation —
operating segment has the meaning given in AASB 8.
- (2) Each EGRC business unit is to be regarded as an operating segment for the purposes of the application of AASB 8 —
- (a) under regulation 6(2) to the separate statements of financial performance; and
 - (b) under Schedule 4 clause 8(1) of the Act to the financial reports of the EGRC.

Subdivision 2 — Arrangements and records in respect of certain transactions

8. Transactions

In this Subdivision —

- (a) a reference to a supply transaction is a reference to a transaction between the wholesale business unit and the

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Segregation **Part 2**
Financial administration **Division 2**
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retail business unit for the wholesale supply of electricity to the retail business unit; and

- (b) a reference to a products transaction is a reference to a transaction between the wholesale business unit and the retail business unit for the supply of wholesale products to the retail business unit.

9. Supply arrangements

- (1) Before any supply transaction for the purposes of a retail supply of electricity to a customer (otherwise than under a new contestable customer arrangement) is entered into, the EGRC must have in place a written arrangement that set out the terms and conditions that are to apply to supply transactions of that kind.
- (2) The written arrangement referred to in subregulation (1) must —
 - (a) state that the transfer price for a wholesale supply of electricity under a supply transaction to which the arrangement applies is the foundation transfer price for that supply; and
 - (b) comply with segregation arrangements and wholesale arrangements.
- (3) Before any supply transaction for the purposes of a retail supply of electricity to a customer under a new contestable customer arrangement is entered into, the EGRC must have in place one or more written arrangements that set out the terms and conditions that are to apply to supply transactions of that kind.
- (4) A written arrangement referred to in subregulation (3) must —
 - (a) set out, or include a mechanism for determining, the transfer price for a wholesale supply of electricity under a supply transaction to which the arrangement applies; and

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Part 2 Segregation

Division 2 Financial administration

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- (b) comply with Part 3 Division 1, segregation arrangements and wholesale arrangements.
- (5) For the purposes of subregulations (1) and (3), a supply transaction is entered into for the purposes of a retail supply of electricity whether or not that retail supply of electricity actually occurs.
- (6) Before any products transaction is entered into, the EGRC must have in place one or more written arrangements that set out the terms and conditions that are to apply to products transactions.
- (7) A written arrangement referred to in subregulation (6) must comply with segregation arrangements and wholesale arrangements.

10. Records of transactions

The EGRC must keep records of each supply transaction and each products transaction.

Subdivision 3 — Foundation transfer price mechanism

11. Foundation transfer price mechanism

- (1) The EGRC must —
 - (a) prepare an instrument (the *foundation transfer price mechanism*) that sets out the means by which the foundation transfer price is to be determined; and
 - (b) give the foundation transfer price mechanism to the Minister.
- (2) The foundation transfer price mechanism given to the Minister under subregulation (1) comes into force when it is given to the Minister and remains in force until 30 June 2017 or a later day approved in writing by the Minister.

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Segregation **Part 2**
Financial administration **Division 2**
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- (3) At least 6 months before the day on which the foundation transfer price mechanism given to the Minister under subregulation (1), or any replacement foundation transfer price mechanism given to the Minister under this subregulation, is to expire, the EGRC must —
 - (a) prepare a replacement foundation transfer price mechanism; and
 - (b) give the replacement foundation transfer price mechanism to the Minister.
- (4) A replacement foundation transfer price mechanism given to the Minister under subregulation (3) —
 - (a) comes into force on the day after the day on which the previous foundation transfer price mechanism expires; and
 - (b) remains in force for a period of 3 years or a longer period approved in writing by the Minister.
- (5) The EGRC must ensure that the foundation transfer price mechanism given to the Minister under subregulation (1), and any replacement foundation transfer price mechanism given to the Minister under subregulation (3), complies with each applicable provision.

12. Revision of foundation transfer price mechanism

- (1) If an applicable provision comes into operation or is amended or repealed, the EGRC must as soon as practicable —
 - (a) revise the foundation transfer price mechanism to the extent necessary to ensure that it complies with each applicable provision; and
 - (b) give the revised foundation transfer price mechanism to the Minister.

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Part 2 Segregation

Division 3 Other segregation obligations

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- (2) The EGRC may at any time —
 - (a) revise the foundation transfer price mechanism to make a change of a minor or technical nature; and
 - (b) give the revised foundation transfer price mechanism to the Minister.
- (3) A revision of the foundation transfer price mechanism under subregulation (1) or (2) comes into force when it is given to the Minister.
- (4) A revision of the foundation transfer price mechanism under subregulation (1) or (2) does not affect the day on which the foundation transfer price mechanism expires.
- (5) The EGRC must not revise the foundation transfer price mechanism otherwise than in accordance with subregulation (1) or (2).

Division 3 — Other segregation obligations

13. Disclosure of restricted information

- (1) The EGRC must ensure that —
 - (a) retail restricted information is not disclosed to retail staff; and
 - (b) generation restricted information is not disclosed to generation staff.
- (2) The EGRC is not required to comply with subregulation (1) if —
 - (a) the restricted information is publicly available at the time the disclosure is made; or
 - (b) the disclosure of the restricted information is required by law.

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Segregation **Part 2**
Other segregation obligations **Division 3**
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14. Information technology access controls

The EGRC must develop, implement and maintain controls to limit access to its information technology systems for the purpose of ensuring compliance with regulation 13(1).

15. Training

- (1) The EGRC must develop, implement and maintain appropriate policies, procedures and systems for the purpose of ensuring that staff who receive or have access to restricted information are made aware of the obligations imposed on the EGRC under this Division and complete training in relation to those obligations.
- (2) The EGRC must ensure that training referred to in subregulation (1) is conducted at least once each year.
- (3) The EGRC must keep a record of staff who have completed training referred to in subregulation (1).

16. Separate work areas

- (1) The EGRC must ensure that wholesale staff who have access to restricted information occupy work areas that are separate from work areas occupied by generation staff or retail staff.
- (2) For the purposes of subregulation (1), work areas are separate from work areas occupied by generation staff or retail staff if the work areas are protected by controls that prevent generation staff and retail staff from entering them.

17. Separation of management roles

- (1) In this regulation —
member of staff does not include a member of shared services staff.

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Part 2 Segregation

Division 4 Segregation arrangements

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- (2) The EGRC must ensure that —
- (a) a member of staff who has management responsibility for the generation business does not have management responsibility for the wholesale business or the retail business; and
 - (b) a member of staff who has management responsibility for the wholesale business does not have management responsibility for the generation business or the retail business; and
 - (c) a member of staff who has management responsibility for the retail business does not have management responsibility for the generation business or the wholesale business.
- (3) For the purposes of subregulation (2), a member of staff has management responsibility for the generation business, wholesale business or retail business if the member of staff has authority to make decisions about the day-to-day management and operation of the business.

Division 4 — Segregation arrangements

18. Minister may approve arrangements

- (1) The Minister may approve arrangements providing for and in relation to the segregation of the wholesale business, the generation business, the retail business and any additional segment approved under regulation 5(2).
- (2) Before approving arrangements under subregulation (1), the Minister must consult with the EGRC.
- (3) Segregation arrangements must be published in the *Gazette*.
- (4) The Minister must cause a copy of segregation arrangements to be laid before each House of Parliament within 10 sitting days of that House after the day on which the arrangements are published in the *Gazette*.

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Segregation **Part 2**
Segregation arrangements **Division 4**
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19. Commencement of segregation arrangements

- (1) In this regulation —
segregation arrangements includes an instrument made under regulation 20.
- (2) Segregation arrangements commence at a time fixed —
 - (a) by the segregation arrangements; or
 - (b) in a manner provided for by the segregation arrangements.
- (3) Different commencement times may be fixed under subregulation (2)(a) for different provisions of segregation arrangements.
- (4) Different commencement times may be fixed under subregulation (2)(b) for different provisions of segregation arrangements unless those segregation arrangements provide otherwise.

20. Amendment or repeal of segregation arrangements

- (1) The Minister may, by instrument published in the *Gazette*, amend or repeal segregation arrangements.
- (2) The Minister must cause a copy of an instrument under subregulation (1) to be laid before each House of Parliament within 10 sitting days of that House after the day on which the instrument is published in the *Gazette*.

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Part 3 Wholesale acquisition or supply of electricity

Division 1 Wholesaling obligations

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Part 3 — Wholesale acquisition or supply of electricity

Division 1 — Wholesaling obligations

21. Wholesale supply to retail business unit

In this Division a reference to a wholesale supply of electricity to the retail business unit is a reference to a supply of electricity under a supply transaction to which a written arrangement referred to in regulation 9(3) applies.

22. EGRC not to discriminate between retail business unit and competitors when offering wholesale supply

The EGRC must ensure that —

- (a) a wholesale supply of electricity is not offered to the retail business unit on terms and conditions that are, having regard to all relevant circumstances, more favourable than the terms on which a wholesale supply of electricity is offered to retail competitors or generation competitors; and
- (b) the financial interests of the retail business unit are not taken into account in determining the terms and conditions on which a wholesale supply of electricity is offered to retail competitors or generation competitors.

23. Policy for determining terms and conditions for wholesale supply of electricity

- (1) The EGRC must prepare and maintain a written policy setting out standard processes to be followed in offering a wholesale supply of electricity to the retail business unit, a retail competitor or a generation competitor, including processes for —
 - (a) assessing the ability of the retail business unit, retail competitor or generation competitor to make payments for the wholesale supply of electricity; and

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Wholesale acquisition or supply of electricity

Part 3

Wholesaling obligations

Division 1

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- (b) determining the terms and conditions on which the wholesale supply of electricity is to be offered, taking into account that assessed ability.
- (2) The EGRC must ensure that the standard processes set out in the policy are not, having regard to all relevant circumstances, more favourable to the retail business unit than to a retail competitor or a generation competitor.
- (3) The EGRC must comply with the policy.
- (4) For the purposes of assessing the ability of the retail business unit to make payments for the wholesale supply of electricity, the financial position of the retail business unit is to be taken to be the financial position of the EGRC.
- (5) The EGRC must —
 - (a) give a copy of the policy, and any revision of the policy, to the Minister; and
 - (b) ensure that a copy of the policy, as revised from time to time, is published on its website.
- (6) The EGRC may remove from the copy of the policy published under subregulation (5)(b) any information it considers is of a commercially sensitive nature.

24. Requests for wholesale supply of electricity

- (1) The EGRC must, as soon as practicable after receiving a request for a wholesale supply of electricity to the retail business unit, a retail competitor or a generation competitor, respond in writing to the request.
- (2) The EGRC must prepare and maintain a written policy setting out standard processes to be followed in responding to requests for a wholesale supply of electricity to the retail business unit, a retail competitor or a generation competitor.

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Part 3 Wholesale acquisition or supply of electricity

Division 1 Wholesaling obligations

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- (3) The EGRC must ensure that the standard processes set out in the policy are not, having regard to all relevant circumstances, more favourable to the retail business unit than to a retail competitor or a generation competitor.
- (4) The EGRC must comply with the policy.
- (5) The EGRC must —
 - (a) give a copy of the policy, and any revision of the policy, to the Minister; and
 - (b) ensure that a copy of the policy, as revised from time to time, is published on its website.
- (6) The EGRC may remove from the copy of the policy published under subregulation (5)(b) any information it considers is of a commercially sensitive nature.

25. Records

The EGRC must keep records of the following —

- (a) each assessment of the ability of the retail business unit, a retail competitor or a generation competitor to make payments that is carried out under the policy referred to in regulation 23(1);
- (b) each request by the retail business unit, a retail competitor or a generation competitor for a wholesale supply of electricity, the response given to the request, and the documents or other material relied upon in giving the response;
- (c) the EGRC's ability to offer a wholesale supply of electricity at the time each request referred to in paragraph (b) is made, taking into account any contracts, agreements or other arrangements entered into by the EGRC in relation to such supply.

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Wholesale acquisition or supply of electricity

Part 3

Wholesale arrangements

Division 2

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Division 2 — Wholesale arrangements

26. Minister may approve arrangements

- (1) The Minister may approve arrangements providing for and in relation to —
 - (a) the wholesale acquisition or supply of electricity by the EGRC; and
 - (b) the acquisition or supply by the EGRC of wholesale products.
- (2) Wholesale arrangements must be published in the *Gazette*.
- (3) The Minister must cause a copy of wholesale arrangements to be laid before each House of Parliament within 10 sitting days of that House after the day on which the arrangements are published in the *Gazette*.

27. Commencement of wholesale arrangements

- (1) In this regulation —
wholesale arrangements includes an instrument made under regulation 28.
- (2) Wholesale arrangements commence at a time fixed —
 - (a) by the wholesale arrangements; or
 - (b) in a manner provided for by the wholesale arrangements.
- (3) Different commencement times may be fixed under subregulation (2)(a) for different provisions of wholesale arrangements.
- (4) Different commencement times may be fixed under subregulation (2)(b) for different provisions of wholesale arrangements unless those wholesale arrangements provide otherwise.

***Electricity Corporations (Electricity Generation and Retail Corporation)
Regulations 2013***

Part 3 Wholesale acquisition or supply of electricity

Division 2 Wholesale arrangements

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28. Amendment or repeal of wholesale arrangements

- (1) The Minister may, by instrument published in the *Gazette*, amend or repeal wholesale arrangements.
- (2) The Minister must cause a copy of an instrument under subregulation (1) to be laid before each House of Parliament within 10 sitting days of that House after the day on which the instrument is published in the *Gazette*.

***Electricity Corporations (Electricity Generation and Retail Corporation)
Regulations 2013***

Audit **Part 4**

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Part 4 — Audit

29. Audit: financial year

- (1) As soon as practicable after the end of each financial year the Auditor General must conduct an audit of the EGRC's operations in the financial year for the purposes of examining the EGRC's compliance with the following —
 - (a) Part 2 Divisions 1 and 2 and segregation arrangements;
 - (b) Part 3 Division 1 and wholesale arrangements.
- (2) For the purposes of the first audit conducted under subregulation (1), the period beginning at the merger time and ending on 30 June 2014 is to be taken to be a financial year.
- (3) The Auditor General must form an opinion about the following —
 - (a) whether the EGRC has complied with Part 2 Divisions 1 and 2 and segregation arrangements;
 - (b) whether the EGRC has complied with Part 3 Division 1 and wholesale arrangements.

30. Audit: calendar year

- (1) As soon as practicable after 31 December each year the Auditor General must conduct an audit of the EGRC's operations in the year for the purposes of examining the EGRC's compliance with Part 2 Division 3.
- (2) The Auditor General must form an opinion about whether the EGRC has complied with Part 2 Division 3.

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Regulations 2013***

Part 4 Audit

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31. Reports on audit

- (1) The Auditor General must give the Minister a report on each audit conducted under regulation 29(1) or 30(1) and include in the report details of —
 - (a) the opinion formed under regulation 29(3) or 30(2), as the case requires; and
 - (b) any deficiency, failure or shortcoming in respect of the matters referred to in regulation 29(3) or 30(2), as the case requires.
- (2) The Auditor General must give a copy of the report to the board of the EGRC and to the Authority as soon as practicable after the report is given to the Minister.
- (3) The Minister must cause a copy of the report to be laid before each House of Parliament within 21 sitting days of that House after the day on which the Minister receives the report.

32. Deletion of commercially sensitive matters from Auditor General's report

- (1) The board of the EGRC may request the Minister to delete a matter that is of a commercially sensitive nature from a copy of a report that is to be laid before a House of Parliament under regulation 31(3).
- (2) The Minister may, despite regulation 31(3), comply with a request under subregulation (1).
- (3) If the Minister complies with a request under subregulation (1) the copy of the report is to include a statement that a matter has been deleted from it under this regulation.

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Part 5 — Enforcement

Division 1 — Investigation

33. Authority has investigative role

If the Auditor General has formed an opinion, as detailed in a report under regulation 31, that the EGRC has not complied with one or more provisions of the EGRC regulatory scheme, it is a function of the Authority to investigate the matter.

Division 2 — Imposition of civil penalties

34. Civil penalty provisions and penalty amounts

- (1) The provisions of the regulations specified in Schedule 1 are civil penalty provisions for the purposes of these regulations.
- (2) The maximum amount that the Authority may impose on the EGRC for a contravention of a civil penalty provision is —
 - (a) an amount of \$100 000; and
 - (b) in addition, a daily amount of \$20 000.

35. Daily amounts

- (1) A daily amount is an amount for each day or part of a day that a contravention of a civil penalty provision continues after the day, specified in a warning notice given to the EGRC under regulation 37, by which the contravention was to be rectified.
- (2) For the purposes of subregulation (1), if the contravention consists of a failure to do something required to be done, the contravention is to be regarded as continuing until the act is done, despite the fact that any period within which, or time before which, the act is required to be done has expired or passed.

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Part 5 Enforcement

Division 2 Imposition of civil penalties

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36. Requirement for investigation

The Authority cannot give the EGRC a warning notice under regulation 37 or a notice under regulation 38 unless the Authority has conducted an investigation under regulation 33 in respect of the matter to which the notice relates.

37. Warning notice

- (1) If the Authority considers that the EGRC has contravened a civil penalty provision, the Authority may give the EGRC a notice (a *warning notice*).
- (2) The warning notice must —
 - (a) identify the civil penalty provision that the Authority considers the EGRC has contravened; and
 - (b) provide details of the contravention, including the act or omission that the Authority considers constitutes the contravention; and
 - (c) request an explanation; and
 - (d) request that the contravention be rectified and specify a day by which it must be rectified.

38. Authority may impose civil penalty

- (1) If the Authority considers that the EGRC has contravened a civil penalty provision, the Authority may, by notice in accordance with subregulation (2), impose on the EGRC a civil penalty of an amount that does not exceed the maximum amount prescribed in regulation 34(2).
- (2) The notice must —
 - (a) be in writing given to the EGRC; and
 - (b) state that it is given under this regulation; and
 - (c) specify the civil penalty provision that the Authority considers the EGRC has contravened; and

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- (d) provide details of the contravention, including the act or omission that the Authority considers constitutes the contravention; and
 - (e) specify the amount of the civil penalty; and
 - (f) inform the EGRC that the EGRC may apply to the Board for review of the Authority's decision to impose the civil penalty; and
 - (g) contain a statement to the effect that the Authority may apply to the Board for an order for the payment of the civil penalty if the EGRC does not, within 28 days after the day on which the notice is given —
 - (i) pay to the Authority the amount imposed; or
 - (ii) apply to the Board, under regulation 42, for review of the Authority's decision to impose the civil penalty.
- (3) Except in the case of a civil penalty that includes a daily amount, the Authority may impose a civil penalty under subregulation (1) without first giving the EGRC a warning notice under regulation 37 in respect of the contravention to which the civil penalty relates.
- (4) The imposition of a civil penalty under subregulation (1) must occur within 6 years after the day on which the EGRC is considered by the Authority to have contravened the relevant civil penalty provision.
- (5) In determining the amount of a civil penalty, the Authority must have regard to all relevant matters, including the following —
- (a) the nature and extent of the contravention;
 - (b) the circumstances in which the contravention took place.

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Part 5 Enforcement

Division 2 Imposition of civil penalties

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39. Board may order payment

- (1) The Authority may apply to the Board for an order for the payment of a civil penalty specified in a notice given to the EGRC under regulation 38 if the EGRC does not, within 28 days after the day on which the notice is given —
 - (a) pay to the Authority the amount imposed; or
 - (b) apply to the Board, under regulation 42, for review of the Authority's decision to impose the civil penalty.
- (2) An application under subregulation (1) must be made within 28 days after the end of the 28 day period referred to in that subregulation.
- (3) The Board may, on an application under subregulation (1), make an order that the EGRC pay the civil penalty imposed if —
 - (a) the Authority imposed the civil penalty in accordance with regulation 38; and
 - (b) the EGRC has not paid the civil penalty to the Authority; and
 - (c) the EGRC has not applied to the Board, under regulation 42, for review of the Authority's decision to impose the civil penalty.

40. Enforcement of order of Board

- (1) The Authority may enforce an order of the Board made under regulation 39(3) by lodging with the Supreme Court a certified copy of it and an affidavit stating to what extent it has not been complied with.
- (2) When lodged, the order is to be taken to be a judgment of the Supreme Court and may be enforced accordingly.

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Regulations 2013***

Enforcement **Part 5**
Review of civil penalty decisions **Division 3**
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41. Civil penalties to be credited to Consolidated Account

A civil penalty paid to the Authority must be credited to the Consolidated Account.

Division 3 — Review of civil penalty decisions

42. Review by Board

- (1) The EGRC may apply to the Board for the review of a civil penalty decision.
- (2) In proceedings on an application for review, the Board may make an order affirming, setting aside or varying (immediately or as from a specified future date) the civil penalty decision and, for the purposes of the review, may exercise the same powers as were available to the Authority when making the civil penalty decision.
- (3) The Board may refuse to review a civil penalty decision if it considers that the application for review is trivial or vexatious.
- (4) The determination by the Board on the review of a civil penalty decision has the same effect as if it were made by the Authority.

43. Application for review

- (1) An application for review of a civil penalty decision must be made within 28 days after the day on which the notice relating to the decision is given to the EGRC under regulation 38.
- (2) An application for review must —
 - (a) be in writing; and
 - (b) provide details of the civil penalty decision.
- (3) The Board may extend the time within which an application for review may be made and may do so even though the time has elapsed.

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Part 5 Enforcement

Division 4 Proceedings

r. 44

- (4) The Board must give written notice of an application for review to the Authority.

44. Procedure on review

- (1) This regulation applies to proceedings on an application for review.
- (2) The Board must make its determination on the review within 90 days after receiving the application for review.
- (3) The Board may extend, or further extend, the period referred to in subregulation (2) by a period of 30 days if it considers that the matter cannot be dealt with properly without the extension, either because of its complexity or because of other special circumstances.
- (4) If the Board extends the period, it must, before the end of the period, notify the EGRC of the extension and the reasons for it.
- (5) The Board may require the Authority to give information and other assistance, and to make reports, as specified by the Board for the purposes of the proceedings.

Division 4 — Proceedings

45. Proceedings before Board

- (1) In this regulation —
proceedings means —
 - (a) proceedings on an application for an order under regulation 39; or
 - (b) proceedings on an application for review of a civil penalty decision under regulation 42.
- (2) On the application of the Authority or the EGRC, the Board may conduct proceedings in the absence of the public.
- (3) The Board may make such orders (if any) as to costs in respect of proceedings as it thinks fit.

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Miscellaneous

Part 6

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Part 6 — Miscellaneous

46. Retention of records and documents

The EGRC must ensure that each record or document created for the purposes of these regulations is retained for at least 7 years after its creation.

47. Exemption

- (1) The Minister may, by instrument given to the EGRC, exempt the EGRC from the operation of a provision of the EGRC regulatory scheme.
- (2) An application for an exemption must —
 - (a) be in writing; and
 - (b) set out the reasons for the application; and
 - (c) set out the exemption sought.
- (3) The Minister may give an exemption —
 - (a) on different terms from those sought by the EGRC; and
 - (b) subject to any conditions the Minister considers appropriate and specifies in the exemption.
- (4) The Minister may, by instrument given to the EGRC, amend or revoke an exemption.
- (5) If the Minister gives the EGRC an instrument under this regulation, the Minister must cause a copy of it to be laid before each House of Parliament within 14 sitting days of that House after the day on which it is given.

48. Review of EGRC regulatory scheme

- (1) At least once each year the Authority must carry out a review of the operation of the EGRC regulatory scheme for the purpose of assessing its effectiveness.

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Part 6 Miscellaneous

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- (2) In carrying out the review the Authority must have regard to —
 - (a) the prevailing circumstances that exist in relation to the operation of the South West interconnected system; and
 - (b) any other matters the Authority considers relevant.
- (3) The Authority must give the Minister a report based on the review not later than 2 months after the review is completed.
- (4) The Authority may include in the report any recommendations it has concerning amendment of the EGRC regulatory scheme.
- (5) The Minister must cause a copy of the report to be laid before each House of Parliament within 21 sitting days of that House after the day on which the Minister receives the report.

49. Deletion of commercially sensitive matters from Authority's report

- (1) The Authority may request the Minister to delete a matter that is of a commercially sensitive nature from a copy of a report that is to be laid before a House of Parliament under regulation 48(5).
- (2) The Minister may, despite regulation 48(5), comply with a request under subregulation (1).
- (3) If the Minister complies with a request under subregulation (1) the copy of the report is to include a statement that a matter has been deleted from it under this regulation.

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Civil penalty provisions **Schedule 1**

Schedule 1 — Civil penalty provisions

[r. 34(1)]

r. 5(1) and (4)

r. 11(1), (3) and (5)

r. 12(1) and (5)

r. 13(1)

r. 16(1)

r. 22

G. MOORE, Clerk of the Executive Council.

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Schedule 1 Civil penalty provisions

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