EN401

ELECTRICITY INDUSTRY ACT 2004
ELECTRICITY NETWORKS ACCESS CODE AMENDMENTS 2021

I, Bill Johnston MLA, Minister for Energy for the State of Western Australia, hereby amend the Electricity Networks Access Code 2004 established under section 104(1) of the Electricity Industry Act 2004.

Dated at Perth this 21st day of June, 2021.

BILL JOHNSTON, MLA, Minister for Energy.

Made by the Minister.

1. Citation
These amendments may be cited as the Electricity Networks Access Code Amendments 2021.

2. Commencement
These amendments come into operation on the date on which they are published in the Gazette.

3. The Electricity Networks Access Code amended
These amendments are to the Electricity Networks Access Code 2004.*
[*Published in Gazette 30 November 2004, p. 5517-5700]

4. Section 1.3 amended
Insert the following definitions and their accompanying notes in the appropriate alphabetical order—

“covered Pilbara network” has the meaning in the Act.

{Note: At the time this definition was inserted, the definition in section 3(1) of the Act was—
“covered Pilbara network” means a covered network that is located wholly or partly in the Pilbara region;}

“form of regulation decision” has the meaning in the Pilbara Networks Access Code.

{Note: At the time this definition was inserted, the definition in section 5 of the PNAC was—
“form of regulation decision” means a decision by the Minister as to whether a covered Pilbara network is to be fully regulated or lightly regulated.}

“fully regulated” has the meaning in the Pilbara Networks Access Code.

{Note: At the time this definition was inserted, the definition in section 5 of the PNAC was—
“fully regulated” in relation to a network, means that the network is a full regulation network.}

“Horizon Power coastal network” has the meaning in the Pilbara Networks Access Code.

{Note: At the time this definition was inserted, the definition in section 5 of the PNAC was—
“Horizon Power coastal network” means the network comprising—
(a) the network which became a covered network as a result of the Minister’s final coverage decision of 2 February 2018 under the ENAC; and
(b) any other network owned by Regional Power Corporation and interconnected as at the code commencement date with the network in paragraph (a); and
(c) any augmentation as at the code commencement date of a network in paragraph (a) or (b); and
(d) any augmentation of the network which forms part of the network under section 4(1).}

“interconnected” has the meaning in the Pilbara Networks Access Code.

{Note: At the time this definition was inserted, the definition in section 5 of the PNAC was—
“interconnected” means a state in which two networks are or become connected, such that electricity can be transferred between them.}

“lightly regulated” has the meaning in the Pilbara Networks Access Code.

{Note: At the time this definition was inserted, the definition in section 5 of the PNAC was—
“lightly regulated” in relation to a network, means that the network is a light regulation network.}

“light regulation network” has the meaning in the Pilbara Networks Access Code.

{Note: At the time this definition was inserted, the definition in section 5 of the PNAC was—
“light regulation network” means a covered Pilbara network which is regulated by Part 8A of the Act.}

“Pilbara network” has the meaning in the Act.

{Note: At the time this definition was inserted, the definition in section 3(1) of the Act was—
“Pilbara network” means network infrastructure facilities that are located wholly or partly in the Pilbara region;}

“priority” means, in relation to—

(a) an “access application” under the PNAC, the priority that the “applicant” has, as against any other “applicant” with a competing “access application” to obtain “access” to “covered services” as determined in accordance with the “user access guide” (as each of those terms are defined in the PNAC); or

(b) an access application, the priority that the applicant has, as against any other applicant with a competing access application, to obtain access to covered services as determined by the applications and queuing policy for the covered Pilbara network.

“Regional Power Corporation” means the body established by the Electricity Corporations Act 2005 section 4(1)(d).

5. Chapter 3 amended

Insert the following [Note] at the start of Chapter 3—

(Note: This Chapter 3 deals with the two ways by which networks located anywhere in Western Australia can become covered, namely—

- by prescription as in Subchapter 3.1; or
- by Ministerial decision under Subchapter 3.2.

For Pilbara networks, there are two other ways a network can become covered, namely—

- by prescription in the PNAC (see section 120B(a) of the Act and Subchapter 3.1 of the PNAC); or
- by a service provider opting under the PNAC for the Pilbara network to be regulated under Part 8A of the Act (see Subchapter 3.3 of the PNAC).

All four classes of covered network may apply under this Code for revocation of coverage under section 3.30 (see section 104A(1)(b) of the Act).

If the Minister makes a final coverage decision that a Pilbara network be covered, then the Minister must concurrently make a form of regulation decision under the PNAC. Under section 104A(2) of the Act this Code applies to regulate only covered networks that are regulated under Part 8A of the Act (that is, light regulation networks).}

6. Section 3.1A amended

Replace the [Note] after section 3.1A with the following—

(Note: The Minister’s final coverage decision applies to those parts of the Horizon Power coastal network which were in existence on 2 February 2018. Section 17 of the PNAC then prescribes those parts, plus the balance of the Horizon Power coastal network as at 1 July 2021, to be lightly regulated under Part 8A of the Act. The combined effect is that the whole of the Horizon Power coastal network is a covered network from 1 July 2021. The Minister may make further decisions under section 3.1B of this Code extending the scope of that covered network.)

7. Sections 3.1B and 3.1C inserted

After section 3.1A the following sections are inserted—

3.1B The Minister may decide under section 104A(1)(a) of the Act that any network owned by Regional Power Corporation and interconnected with the Horizon Power coastal network is to be part of that covered network.

3.1C The Minister must publish a decision made under section 3.1B but Subchapters 3.2 and 3.3 do not apply to the making of that decision.

8. Section 3.2A inserted

After section 3.2 the following heading and section are inserted—

3.2A Pilbara network that is deemed to be a light regulation network under section 31(4) of the PNAC can only be the subject of a coverage application as provided for in section 31(5) of the PNAC.

9. Subchapter 3.6 inserted

After section 3.37 the following Subchapter is inserted—

Subchapter 3.6—Transitional matters relating to form of regulation decision
Contracts preserved
3.38 If the Minister makes a form of regulation decision under the PNAC that a Pilbara network which was previously fully regulated is to be lightly regulated, then any existing contracts for services in respect of the Pilbara network will continue in accordance with their terms, including for the duration of any option periods provided for in any such contracts (subject to any variations the parties may agree from time to time).

3.39 If a contract which is continued under section 3.38 depends upon a regulated outcome under this Code (for example, because it adopts a regulated tariff from time to time) then the arbitrator under the PNAC has jurisdiction to hear an access dispute in respect of the relevant contract and the provisions of Chapter 7 of the PNAC will apply to such dispute.

3.40 Section 3.39 applies in addition to any other dispute resolution mechanism included in a contract, and the arbitrator under the PNAC has jurisdiction to determine the effect of section 3.39.

3.41 If the Minister makes a form of regulation decision under the PNAC that a Pilbara network which was previously lightly regulated is to be fully regulated, then any existing “contracts for services” (as defined in the PNAC) in respect of the Pilbara network will continue in accordance with their terms, including for the duration of any option periods provided for in any such contracts (subject to any variations the parties may agree from time to time).

How applications and disputes in progress are managed

3.42 Following a form of regulation decision under the PNAC that a Pilbara network be lightly regulated—

(a) any access application made before the date of the form of regulation decision is to be transitioned to being lightly regulated under the PNAC; and

(b) the access application’s priority will remain the same under the PNAC as its priority under this Code; and

(c) the applicant and the service provider must meet expeditiously and negotiate in good faith with a view to agreeing any amendments or additional information needed in respect of the access application as a result of the transition, and failing agreement the question may be the subject of an access dispute under the PNAC but not an access dispute under this Code; and

(d) any access dispute notified to the Authority before the date of the form of regulation decision is to be transitioned to be determined by arbitration under the PNAC, in which case the arbitrator may make such orders as the arbitrator deems necessary in respect of the transition.

(Note: This gives the arbitrator the power to make orders to deal with the transition of an access dispute to be determined by arbitration under the PNAC. Similar powers also exist under the PNAC. The combined effect is that the arbitrators under both this Code and the PNAC can make the necessary orders to transition an access dispute.)

3.43 If the Minister makes a form of regulation decision under the PNAC that a Pilbara network which was previously lightly regulated is to be fully regulated, the service provider must submit to the Authority, as applicable, either—

(a) if the Pilbara network has not previously had an access arrangement—a proposed access arrangement and access arrangement information under section 4.1; or

(b) if the Pilbara network has previously had an access arrangement—proposed revisions to the access arrangement and proposed revised access arrangement information under section 4.48.

3.44 The form of regulation decision that a Pilbara network is fully regulated does not take effect until, as applicable, the access arrangement start date or revisions commencement date in respect of the submission referred to in section 3.43.

3.45 Following a form of regulation decision that a Pilbara network which was previously lightly regulated is to be fully regulated—

(a) any access application made under the PNAC before the date of the form of regulation decision, is to be transitioned to be determined under this Code; and

(b) the access application has effect for the purposes of this Code as though it was an access application lodged under the service provider’s access arrangement; and

(c) the access application’s priority will remain the same under this Code as its priority under the PNAC; and

(d) the applicant and the service provider must meet expeditiously and negotiate in good faith with a view to agreeing any amendments or additional information needed in respect of the access application as a result of the transition, and failing agreement the question may be the subject of an access dispute under this Code but not an access dispute under the PNAC; and
any access dispute under the PNAC notified to the Authority before the date of the form of regulation decision, is to be transitioned to be determined as an access dispute under this Code, in which case the arbitrator may make such orders as the arbitrator deems necessary in respect of the transition.

{Note: This gives the arbitrator the power to make orders to deal with the transition of an access dispute under the PNAC to be determined as an access dispute under this Code. Similar powers also exist under the PNAC. The combined effect is that the arbitrators under both this Code and the PNAC can make the necessary orders to transition an access dispute under the PNAC.}

10. Subsection 10.29(g) amended
The full stop at the end of subsection 10.29(g) is replaced with—

“; or”

11. Subsection 10.29(h) inserted
After subsection 10.29(g) the following subsection is inserted—

“(h) make an “immunity determination” under the Electricity Industry (Pilbara Networks) Regulations 2021.”