

## 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;}

“**Pilbara Networks Access Code**” or “**PNAC**” means the *Pilbara Networks Access Code 2021*.

“**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 8 of the Act. The *PNAC* applies to regulate only *covered Pilbara 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

- (e) 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*.

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