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ELECTRICITY INDUSTRY ACT 2004

**ELECTRICITY INDUSTRY
(WHOLESALE ELECTRICITY
MARKET) AMENDMENT
REGULATIONS 2005**

Western Australia

**Electricity Industry (Wholesale Electricity
Market) Amendment Regulations 2005**

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Electricity Industry Act 2004

Electricity Industry (Wholesale Electricity Market) Amendment Regulations 2005

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Electricity Industry (Wholesale Electricity Market) Amendment Regulations 2005*.

2. Commencement

These regulations come into operation on the day on which they are published in the *Gazette*.

3. The regulations amended

The amendments in these regulations are to the *Electricity Industry (Wholesale Electricity Market) Regulations 2004**.

[* *Published in Gazette 30 September 2004, p. 4189-205.*]

4. Regulation 3 amended

Regulation 3 is amended by inserting the following definition in the appropriate alphabetical position —

“

“**System Management**” has the meaning given to that term in regulation 13(2);

”

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5. Regulation 13 amended

After regulation 13(2) the following subregulation is inserted —

“

- (2a) The function referred to in subregulation (1) is a system management function for the purposes of the definition of “system management participant” in section 126(1) of the Act.

”.

6. Parts 5, 6, 7 and 8 and Schedules 1 and 2 inserted

After regulation 21 the following Parts and Schedules are inserted —

“

Part 5 — Enforcement of the market rules

Division 1 — Preliminary

22. Terms used in this Part

In this Part —

“**authorised person**” means a person authorised under regulation 23;

“**civil penalty**” means a penalty demanded by the IMO under regulation 31(1) or imposed by the Board under regulation 33(1);

“**civil penalty provision**” has the meaning given to that term in regulation 30(1).

Division 2 — Investigation

23. Authorised persons

The IMO may, in writing, authorise an officer or employee of the IMO to be an authorised person for the purposes of this Division.

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24. Search warrants

- (1) An authorised person may apply to a magistrate for the issue of a search warrant in relation to a particular place if the person believes on reasonable grounds that —
 - (a) there is or has been or will be a contravention of a provision of these regulations or the market rules; and
 - (b) there is or may be a thing or things of a particular kind connected with the contravention on or in that place.
- (2) If a magistrate is satisfied by the evidence, on oath or by affidavit, of an authorised person that there are reasonable grounds for suspecting that there is, or may be within the next 7 days, a thing or things of a particular kind connected with a contravention of a provision of these regulations or the market rules on or in a place, the magistrate may issue a search warrant authorising a person named in the warrant —
 - (a) to enter the place specified in the warrant, with such assistance and by the use of such force as is necessary and reasonable;
 - (b) to search the place or any part of the place;
 - (c) to search for and seize a thing named or described in the warrant and which the person believes on reasonable grounds to be connected with the contravention;
 - (d) to inspect, examine or photograph anything in the place;
 - (e) to take extracts from, and make copies of, any documents in the place;

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- (f) to take into the place such equipment and materials as the person requires for exercising the powers.
- (3) A search warrant issued under this regulation must specify —
 - (a) the purpose for which the search is required and the nature of the suspected contravention of the provision of these regulations or the market rules;
 - (b) any conditions to which the warrant is subject;
 - (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (d) the day on which the warrant ceases to have effect, which must not be later than 7 days after the day on which the warrant is issued.
- (4) In this regulation, a reference to a contravention includes a reference to a possible contravention.

25. Announcement before entry

- (1) On executing a search warrant, the person executing the warrant must announce that he or she is authorised by the warrant to enter the place and, if the person has been unable to obtain unforced entry, must give any person at the place an opportunity to allow entry to the place.
- (2) A person need not comply with subregulation (1) if he or she believes on reasonable grounds that immediate entry to the place is required to ensure the safety of any person or to ensure that the effective execution of the search warrant is not frustrated.

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26. Details of warrant to be given to occupier

- (1) If the occupier, or another person who apparently represents the occupier, is present at the place when a search warrant is being executed, the person executing the warrant must —
 - (a) identify himself or herself to that person; and
 - (b) give the person a copy of the warrant.
- (2) If the occupier, or another person who apparently represents the occupier, is present at the place when a search warrant is being executed, the person executing the warrant is not entitled to exercise any powers under that warrant in relation to the place unless the person complies with subregulation (1).
- (3) In the absence of the occupier, or another person who apparently represents the occupier, the person executing the warrant must leave a copy of it at the place.

27. Copies of seized documents

- (1) If a person executing a warrant retains possession of a document seized from a person in accordance with the warrant, the person must give that other person, within 21 days after the day on which the document is seized, a copy of the document certified as correct by the person executing the warrant.
- (2) A copy of a document certified under subregulation (1) is to be received in all relevant courts and all tribunals to be evidence of equal validity to the original.

28. Retention and return of seized documents etc.

- (1) If a document or other thing seized in accordance with a warrant has not been returned to the person from whom it was seized within 3 months after the day on

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which it was seized, the person executing the warrant must take reasonable steps to return it unless —

- (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
 - (b) a magistrate makes an order under subregulation (4) extending the period during which the document or thing may be retained.
- (2) An authorised person may apply to a magistrate —
- (a) within 3 months after the day on which a document or other thing is seized in accordance with a warrant; or
 - (b) if an extension has already been granted under subregulation (4), before the end of the period of the extension,
- for an extension of the period for which the document or thing may be retained but so that the total period of retention does not exceed 12 months.
- (3) An application must be made before proceedings for the purpose for which the document or thing was retained have been commenced.
- (4) A magistrate may order such an extension if he or she is satisfied that —
- (a) it is in the interests of justice;
 - (b) the total period of retention does not exceed 12 months; and
 - (c) retention of the document or other thing is necessary —
 - (i) for the purposes of an investigation into whether a contravention of a provision

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- of these regulations or the market rules
has occurred; or
- (ii) to enable evidence of a contravention of
a provision of these regulations or the
market rules to be obtained for the
purposes of a proceeding under these
regulations.
- (5) If proceedings are commenced for the purposes for
which the document or thing was retained at any time
before the expiry of the period specified in an order
under subregulation (4), the document or thing may be
retained until those proceedings (including any appeal)
have been completed despite those proceedings being
completed after the period specified in the order.
- (6) At least 7 days prior to the day of the hearing of an
application under subregulation (4) by a magistrate,
notice of the application must be sent to the owner of
the document or thing described in the application.

29. Obstruction of persons authorised to enter

A person must not, without reasonable excuse, obstruct
or hinder a person in the exercise of a power under a
search warrant under this Division.

Penalty: \$10 000.

Division 3 — Orders and penalties

30. Civil penalty provisions and civil penalties

- (1) The provisions of the market rules specified in the
Table to Schedule 1 are “**civil penalty provisions**” for
the purposes of these regulations.
- (2) The category of a civil penalty provision is the
category specified for the provision in the Table to
Schedule 1.

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Note: Categories B and C are specified in the Table for the purposes of the market rules.

- (3) The maximum civil penalty amount (which may include a daily amount) that may be demanded from or imposed upon a person who contravenes a civil penalty provision is prescribed in the Table to Schedule 1.

31. IMO may demand civil penalty for contravention of category A civil penalty provision

- (1) If the IMO considers that a participant has contravened a category A civil penalty provision, the IMO may, by notice given to the participant, demand that the participant pay to the IMO a civil penalty of an amount that does not exceed the maximum civil penalty amount prescribed for the contravention in the Table to Schedule 1.
- (2) An amount specified as a daily amount in the Table to Schedule 1 in respect of a contravention of a civil penalty provision applies, as part of the prescription of the maximum civil penalty amount for the contravention, for each day or part of a day that the contravention continues after —
 - (a) if a day or time by which the contravention was to be rectified is specified in a warning notice given to the participant — the day by which the contravention was to be rectified; or
 - (b) in any other case — the day on which the participant is given a warning notice.

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- (3) For the purposes of subregulation (2) —
- (a) 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; and
 - (b) the warning notice is the notice required to be given by the IMO to the participant under the market rules warning the participant that the IMO believes that the participant has contravened the provision.
- (4) The demand must be made within 6 years after the day on which the participant is considered by the IMO to have contravened the provision.
- (5) The notice must —
- (a) be in writing;
 - (b) state the name and address of the participant;
 - (c) state that the notice is given under regulation 31 of the *Electricity Industry (Wholesale Electricity Market) Regulations 2004*;
 - (d) specify the category A civil penalty provision that the IMO considers the participant has contravened;
 - (e) provide details of the contravention, including the act or omission that the IMO considers constitutes the contravention;
 - (f) specify the amount of the civil penalty;
 - (g) inform the participant that the participant may apply to the Board for review of the IMO's decision to demand the penalty; and

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- (h) contain a statement to the effect that if the participant does not, within 28 days after the day on which the participant receives the notice —
 - (i) pay to the IMO the amount demanded;
or
 - (ii) apply to the Board for review of the IMO's decision to demand the penalty,
the IMO may apply to the Board for an order for the payment of the penalty.
- (6) If a participant does not, within 28 days after the day on which the participant received the notice —
 - (a) pay to the IMO the penalty demanded in the notice; or
 - (b) apply to the Board for review, under Part 6, of the IMO's decision to demand the penalty,
the IMO may, within a further 28 days, apply to the Board for an order for the payment of the penalty demanded in the notice.
- (7) The Board may make an order that the participant pay the civil penalty demanded of the participant if —
 - (a) the IMO made the demand in accordance with this regulation;
 - (b) the participant has not paid the civil penalty to the IMO; and
 - (c) the participant has not applied to the Board for review of the IMO's decision to demand the amount.
- (8) The IMO may not demand that a participant pay the IMO a civil penalty in respect of the contravention of a civil penalty provision and the Board may not make an order that the participant pay the civil penalty

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demanded of the participant if the Board has made an order under regulation 33 that the participant pay a civil penalty in respect of the contravention.

32. Applications for orders from Board for contraventions of provisions of market rules

- (1) If the IMO considers that a participant has contravened a provision of the market rules, the IMO may apply to the Board for one or more orders under regulation 33.
- (2) The application must be made within 6 years after the day on which the participant is considered by the IMO to have contravened the provision.
- (3) If a person approved by the Minister under subregulation (6) considers that the IMO has contravened a provision of the market rules, the person may apply to the Board for one or more orders under regulation 33.
- (4) The application must be made within 6 years after the day on which the IMO is considered by the person approved by the Minister to have contravened the provision.
- (5) No other person may apply for an order under regulation 33.
- (6) The Minister may, by notice published in the *Gazette*, approve a person for the purposes of subregulation (3).

33. Orders Board may make for contraventions of provisions of market rules

- (1) If the Board determines that a participant has contravened a provision of the market rules, the Board may make one or more of the following orders —
 - (a) if the provision is a civil penalty provision — an order that the participant pay to the IMO a

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- civil penalty of an amount that does not exceed the maximum civil penalty amount prescribed for the contravention in the Table to Schedule 1;
- (b) an order that the participant cease, within a specified period, the act or omission constituting the contravention;
 - (c) an order that the participant take such action, or adopt such practice, as the Board requires for remedying the contravention or preventing a recurrence of the contravention;
 - (d) an order that the participant implement a specified program for compliance with the market rules;
 - (e) if the participant is a registered participant — an order suspending the participant's registration for a specified period or suspending any other specified right of the participant under the market rules for a specified period;
 - (f) if the participant is a registered participant — an order that the participant's generating system or transmission or distribution system, or other facilities or loads, be disconnected;
 - (g) if the participant is a registered participant — an order that the participant's registration be cancelled.
- (2) An amount specified as a daily amount in the Table to Schedule 1 in respect of a contravention of a civil penalty provision applies, as part of the prescription of the maximum civil penalty amount for the contravention, for each day or part of a day that the contravention continues after —
- (a) if a day or time by which the contravention was to be rectified is specified in a warning notice

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- given to the participant — the day by which the contravention was to be rectified; or
- (b) in any other case — the day on which the participant is given a warning notice.
- (3) For the purposes of subregulation (2) —
- (a) 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; and
- (b) the warning notice is the notice required to be given by the IMO to the participant under the market rules warning the participant that the IMO believes that the participant has contravened the provision.
- (4) Before making an order, the Board must have regard to all relevant matters, including —
- (a) the nature and extent of the contravention;
- (b) the nature and extent of any loss or damage suffered as a result of the contravention;
- (c) the circumstances in which the contravention took place;
- (d) whether the participant has previously been found by the Board in proceedings under the Act to have engaged in any similar conduct; and
- (e) the consequences of making the order.
- (5) The Board may not order that the IMO pay a civil penalty.

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- (6) The Board may not make an order under this regulation that a participant pay a civil penalty in respect of the contravention of a civil penalty provision if the IMO has demanded that the participant pay to the IMO a civil penalty in respect of the contravention.

34. Enforcement of orders of the Board

- (1) The IMO may enforce an order of the Board made under regulation 31(7) or 33(1) 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 court and may be enforced accordingly.

35. Contravention of provision of market rules not an offence

A contravention of a provision of the market rules is not an offence.

36. Conduct contravening more than one civil penalty provision

- (1) If the conduct of a participant constitutes a contravention of 2 or more civil penalty provisions, action may be taken under this Part against the participant in relation to the contravention of any one or more of those provisions.
- (2) However, the participant is not liable to more than one civil penalty in respect of the same conduct.

37. Application of civil penalties received by the IMO

A civil penalty received by the IMO in respect of the contravention of a civil penalty provision must be —

- (a) if the market rules provide for the distribution of civil penalties received by the IMO in

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respect of the contravention amongst participants of a particular class — distributed in accordance with the market rules; or

- (b) if the market rules do not provide for such a distribution — credited to the Consolidated Fund.

38. IMO to inform certain persons of decisions not to take action

- (1) If the IMO is given information from a person in relation to a contravention or possible contravention of a provision of the market rules by a participant but —
 - (a) decides not to investigate the contravention or possible contravention; or
 - (b) following an investigation, decides not to demand a civil penalty under regulation 31 or seek an order from the Board under regulation 33,

the IMO must notify the person of the decision in writing.

- (2) This regulation does not apply if the person gave the information anonymously.

39. Applications for orders from Board — procedure

- (1) An application by the IMO to the Board for an order under regulation 31(7) or 33(1) must —
 - (a) be in writing;
 - (b) state that the applicant is the IMO;
 - (c) specify the provision of the regulations under which the IMO is making the application;
 - (d) provide details of the contravention of the market rules that the IMO considers has occurred, including the name and address of the

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- participant alleged to have contravened the market rules; and
- (e) specify the nature of the order sought.
- (2) An application by the person referred to in regulation 32(3) to the Board for an order under regulation 33(1) against the IMO must —
- (a) be in writing;
- (b) state the name of the person and that the person is approved by the Minister under regulation 32(6);
- (c) specify the provision of the regulations under which the person is making the application;
- (d) provide details of the contravention of the market rules that the person considers has occurred; and
- (e) specify the nature of the order sought.

Division 4 — Payments under the market rules

40. Obligation to make payments under the market rules

- (1) If, under the market rules —
- (a) a registered participant or the IMO (the “**person required to pay**”) is required to pay an amount to a registered participant or the IMO;
- (b) the market rules specify the day by which the amount must be paid; and
- (c) the person required to pay has not paid the amount within 28 days after the day referred to in paragraph (b),

the person required to pay commits an offence.

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Penalty: \$50 000 and \$10 000 for each day, after the 28th day, on which the amount is not paid.

- (2) If, under the market rules —
- (a) a registered participant or the IMO (the **“person required to pay”**) is required to pay an amount to a registered participant or the IMO;
 - (b) the market rules do not specify the day by which the amount must be paid;
 - (c) the person required to pay has been given a notice to pay which specifies the day by which the amount must be paid; and
 - (d) the person required to pay has not paid the amount within 28 days after the day referred to in paragraph (c),

the person required to pay commits an offence.

Penalty: \$50 000 and \$10 000 for each day, after the 28th day, on which the amount is not paid.

- (3) Subregulations (1) and (2) apply despite a registered participant or the IMO disputing, under the market rules, the amount to be paid unless —
- (a) the market rules provide that the amount need not be paid if the amount is disputed under the market rules; or
 - (b) the parties to the dispute agree otherwise.

Part 6 — Review by the Board

41. Reviewable decisions and procedural decisions

- (1) In this Part —
- “procedural decision”** means a reviewable decision made under a provision listed in the Table to Schedule 2 clause 2;

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“reviewable decision” means a decision that is reviewable under section 125(1) of the Act.

- (2) Decisions made under provisions of the regulations or the market rules not listed in the Table to Schedule 2 clause 1 are specified for the purposes of section 125(1) of the Act.

42. Review by the Board — all reviewable decisions

- (1) A person whose interests are adversely affected by a reviewable decision may apply to the Board for a review of the decision.
- (2) The provisions of Schedule 1 section 38(3), (4), (5), (8), (9), (11) and (12) of the *Gas Pipelines Access (Western Australia) Act 1998* apply to the application and to the review of the decision, with the following modifications —
- (a) a reference to the relevant appeals body is to be read as a reference to the Board;
 - (b) a reference to the relevant Regulator is to be read as a reference to the IMO;
 - (c) in relation to the review of a procedural decision — modifications resulting from regulation 43.
- (3) If the Board decides that a person’s interests are not adversely affected by a reviewable decision, the Board must give the person written reasons for its decision.

43. Review by the Board — procedural decisions

- (1) In reviewing a procedural decision, the Board is to consider only the question of whether the decision maker followed the procedures required under the regulations or the market rules to be followed in connection with the making of the decision.

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- (2) In reviewing a procedural decision, the Board is to be constituted by a legal practitioner only.
 - (3) In reviewing a procedural decision, the Board must —
 - (a) if it finds that the decision maker followed the procedure — affirm the decision; or
 - (b) if it finds that the decision maker did not follow the procedure — set the decision aside and remit the matter to the decision maker to be decided in accordance with the procedure and any recommendations of the Board.

44. Application for review

- (1) An application for review of a reviewable decision must be made within —
 - (a) if notice of the making of the decision is required by the regulations or the market rules to be given to a person affected by the decision — 28 days after the day on which the notice is given; or
 - (b) in any other case — 28 days after the day on which notice of the making of the decision has been published in accordance with subregulation (2).
- (2) For the purposes of subregulation (1)(b), notice of a decision has been published if the notice is published on the market website.
- (3) An application for review of a reviewable decision must —
 - (a) be in writing;
 - (b) state the name and address of the applicant;
 - (c) provide details of the decision, including who made the decision and under which regulation

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or market rule the decision was made or purportedly made; and

(d) state how the applicant is adversely affected by the decision.

- (4) The Board may extend the time within which an application for review of a reviewable decision may be made, and may do so even though the time has elapsed.
- (5) The Board must give written notice of an application for review of a reviewable decision to the person who made the decision.

45. Effect of application for review

- (1) The making of an application for review of a reviewable decision does not affect the operation of the decision or prevent the taking of action to implement it unless the Board, on application by a party to the proceeding, makes an order under subregulation (2).
- (2) The Board may make an order staying or otherwise affecting the operation or implementation of the whole or a part of the decision if the Board thinks that it is appropriate to do so for the purpose of securing the effectiveness of the hearing and determination of the application, after taking into account the interests of any persons who may be affected by the review.
- (3) An order under this regulation —
- (a) may be varied or revoked;
 - (b) is subject to the conditions specified in the order; and
 - (c) has effect until the earlier of —
 - (i) the end of the period of operation specified in the order (if any); or

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- (ii) the time at which the decision of the Board on the application comes into operation.

46. Conferences

- (1) If an application is made to the Board for review of a reviewable decision, the Board may direct that a conference of the parties to the proceeding be held, presided over by a member of the Board.
- (2) If —
 - (a) a conference is held;
 - (b) at or after the conference, agreement is reached between the parties as to the terms of a decision of the Board in the proceeding that would be acceptable to the parties;
 - (c) the terms of the agreement are written down, signed by the parties and given to the Board; and
 - (d) the Board is satisfied that —
 - (i) a decision in those terms would be within the powers of the Board; and
 - (ii) that it would be appropriate to make a decision in those terms,

the Board may, without holding a hearing, make a decision in accordance with those terms.

- (3) At the hearing of a proceeding before the Board, unless the parties otherwise agree, evidence must not be given, and statements must not be made, about anything that happened at a conference held under subregulation (1) in relation to the proceeding.

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- (4) If, in relation to the hearing of a proceeding before the Board —
- (a) a party to the proceeding who was present at a conference objects to the member of the Board who presided over the conference participating in the proceeding; and
 - (b) that party notifies the Board of that objection before or at the start of the hearing,

the member is not entitled to be a member of the Board constituted for the purposes of the proceeding.

47. Procedure

- (1) If a party to a proceeding before the Board has had reasonable notice of the proceeding and fails, without reasonable excuse, either to appear at a conference or at the hearing of the proceeding, the Board may —
- (a) if the only other party to the proceeding is the person who made the reviewable decision, dismiss the application concerned; or
 - (b) in any other case, direct that the person who failed to appear ceases to be a party to the proceeding.
- (2) If an application has been made by a person for review of a reviewable decision, any other person whose interests are adversely affected by the decision may apply to the Board to be made a party to the proceeding and the Board may, by order, make the person a party to the proceeding.
- (3) An application under subregulation (2) must —
- (a) be in writing;
 - (b) state the name and address of the applicant;

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- (c) provide details of the proceeding to which the applicant is applying to be made a party; and
- (d) provide details of how the applicant's interests are adversely affected by the decision.

Part 7 — The Board

48. Terms used in this Part

In this Part —

“**procedural decision**” has the meaning given to that term in regulation 41;

“**reviewable decision**” has the meaning given to that term in regulation 41.

49. Functions of the Board

- (1) The provisions of Part 6 Division 2 (except section 50) and Schedule 1 section 38(7) and (10) of the *Gas Pipelines Access (Western Australia) Act 1998* apply to and in relation to —
 - (a) the making of an order by the Board under regulation 31(7) or 33; and
 - (b) the review of a reviewable decision by the Board under regulation 42 or 43.
- (2) The provisions apply with the following modifications —
 - (a) a reference to the Gas Pipelines Access (Western Australia) Law is to be read as a reference to the market rules;
 - (b) a reference to the relevant appeals body is to be read as a reference to the Board;
 - (c) section 58 of the *Gas Pipelines Access (Western Australia) Act 1998* does not apply to

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the extent to which it is inconsistent with regulation 50(1);

- (d) in relation to the review of a procedural decision — modifications resulting from regulation 43.

50. Proceedings before the Board

- (1) In proceedings before the Board —
 - (a) it is a reasonable excuse for a person to fail to answer a question if answering the question might tend to incriminate the person; and
 - (b) it is a reasonable excuse for a person to fail to produce a document if producing the document might tend to incriminate the person.
- (2) A witness summoned to appear at a hearing of the Board is entitled to be paid such allowances and expenses as the Board determines.
- (3) If the Board is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, the Board may, by order —
 - (a) give directions prohibiting or restricting the publication of evidence given before the Board (whether in public or private) or of matters contained in documents filed with, or received in evidence by, the Board; or
 - (b) give directions prohibiting or restricting the disclosure to some or all of the parties to a proceeding of evidence given before the Board or of matters contained in documents filed with, or received in evidence by, the Board.
- (4) In considering whether publication, or disclosure to a party, of evidence, or of a matter contained in a

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document or received in evidence, should be prohibited or restricted, the Board is to take as the basis of its consideration the principle that evidence given before the Board and the contents of documents lodged with the Board or received in evidence by the Board should be made available to all parties, but must pay due regard to any reasons given to the Board why publication or disclosure of the evidence or matter should be prohibited or restricted.

Part 8 — Limitation of liability

51. Persons exempt from section 126(3)(a) of the Act

For the purposes of section 126(4) of the Act, the following persons are specified —

- (a) the Authority;
- (b) the IMO;
- (c) the Minister to whom the administration of the *Electricity Industry Act 2004* is committed;
- (d) the Minister to whom the administration of the *Electricity Corporation Act 1994* is committed;
- (e) the Coordinator of Energy (if the Minister has approved that person under regulation 32(6));
- (f) the Board.

52. Maximum civil monetary liability for certain market governance participants

- (1) This regulation applies to a person who is a market governance participant but who is not exempt from section 126(3)(a) of the Act under regulation 51.
- (2) For the purposes of section 126(3)(b) of the Act, the maximum amount of the person's liability to pay a civil monetary penalty to another person in respect of an act

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or omission (the “**relevant act or omission**”) is the lesser of —

- (a) \$100 000; or
 - (b) the amount (if any) by which \$10 000 000 exceeds the person’s total liability (whether paid or payable) for civil monetary penalties arising from acts or omissions occurring in the 12 months immediately proceeding the day after the day on which the relevant act or omission occurred.
- (3) The person’s total liability for civil monetary penalties referred to in subregulation (2) is to be determined as at the time at which the person’s liability to a civil monetary penalty in respect of the relevant act or omission is to be determined.

53. Maximum civil monetary liability for officers and employees of market governance participants

For the purposes of section 126(3)(b) of the Act, the maximum amount of liability of an officer or employee of a market governance participant to pay a civil monetary penalty to another person in respect of an act or omission is \$1.

Schedule 1 — Civil penalty provisions and amounts

[r. 30]

Table

Provision	Category	Maximum civil penalty amounts
cl. 2.13.14	B	first contravention: \$15 000 plus a daily amount of \$500 subsequent contraventions: \$30 000 plus a daily amount of \$1 000

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Provision	Category	Maximum civil penalty amounts
cl. 2.13.25	B	first contravention: \$15 000 plus a daily amount of \$500 subsequent contraventions: \$30 000 plus a daily amount of \$1 000
cl. 2.16.6(b)	B	first contravention: \$15 000 plus a daily amount of \$500 subsequent contraventions: \$30 000 plus a daily amount of \$1 000
cl. 2.27.1	A	first contravention: \$10 000 subsequent contraventions: \$20 000
cl. 2.29.6	C	first contravention: \$40 000 plus a daily amount of \$5 000 subsequent contraventions: \$80 000 plus a daily amount of \$15 000
cl. 2.29.7	C	first contravention: \$40 000 plus a daily amount of \$5 000 subsequent contraventions: \$80 000 plus a daily amount of \$15 000
cl. 2.29.8	B	first contravention: \$15 000 plus a daily amount of \$500 subsequent contraventions: \$30 000 plus a daily amount of \$1 000
cl. 2.31.9	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
cl. 2.32.4(a)	C	first contravention: \$45 000 plus a daily amount of \$10 000 subsequent contraventions: \$90 000 plus a daily amount of \$15 000
cl. 2.34.2	B	first contravention: \$15 000 subsequent contraventions: \$30 000
cl. 2.34.3	B	first contravention: \$15 000 subsequent contraventions: \$30 000

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Provision	Category	Maximum civil penalty amounts
cl. 2.34.6	B	first contravention: \$15 000 plus a daily amount of \$500 subsequent contraventions: \$30 000 plus a daily amount of \$1 000
cl. 2.35.1	A	first contravention: \$10 000 subsequent contraventions: \$20 000
cl. 2.35.2	A	first contravention: \$10 000 subsequent contraventions: \$20 000
cl. 2.35.3	A	first contravention: \$5 000 subsequent contraventions: \$10 000
cl. 2.36.3	A	first contravention: \$10 000 subsequent contraventions: \$20 000
cl. 2.36.4	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 2.37.5	B	first contravention: \$15 000 subsequent contraventions: \$30 000
cl. 2.38.1	B	first contravention: \$15 000 plus a daily amount of \$500 subsequent contraventions: \$30 000 plus a daily amount of \$1 000
cl. 2.38.2	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
cl. 2.38.3	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
cl. 2.41.2	B	first contravention: \$25 000 subsequent contraventions: \$50 000
cl. 2.42.4	C	first contravention: \$40 000 plus a daily amount of \$5 000 subsequent contraventions: \$80 000 plus a daily amount of \$15 000

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Provision	Category	Maximum civil penalty amounts
cl. 2.44.4	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 3.4.6	C	first contravention: \$45 000 subsequent contraventions: \$90 000
cl. 3.4.8	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 3.5.8	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 3.5.10	C	first contravention: \$45 000 subsequent contraventions: \$90 000
cl. 3.6.5	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 3.6.6	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 3.8.2(c)	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
cl. 3.16.4	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
cl. 3.16.7	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
cl. 3.16.8	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
cl. 3.17.5	C	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3.17.6	C	first contravention: \$50 000 subsequent contraventions: \$100 000

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Provision	Category	Maximum civil penalty amounts
cl. 3.18.7	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 3.18.8	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 3.18.9	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 3.18.13 (d)(i)	C	first contravention: \$40 000 plus a daily amount of \$5 000 subsequent contraventions: \$80 000 plus a daily amount of \$15 000
cl. 3.19.1	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 3.19.8	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 3.20.2	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 3.21.4	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 4.5.4	C	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 4.10.2	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 4.22.5(b)	B	first contravention: \$25 000 subsequent contraventions: \$50 000
cl. 4.27.5	B	first contravention: \$20 000 plus a daily amount of \$5 000 subsequent contraventions: \$40 000 plus a daily amount of \$5 000
cl. 6.1.1	A	first contravention: \$10 000 subsequent contraventions: \$20 000
cl. 6.4.4	A	first contravention: \$10 000 subsequent contraventions: \$20 000

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Provision	Category	Maximum civil penalty amounts
cl. 6.5.1	B	first contravention: \$20 000 subsequent contraventions: \$40 000
cl. 6.8.7	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 6.8.9	B	first contravention: \$25 000 subsequent contraventions: \$50 000
cl. 6.19.9	B	first contravention: \$25 000 subsequent contraventions: \$50 000
cl. 7.7.9(b)	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 7.9.1	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 7.9.3	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 7.9.5	C	first contravention: \$45 000 subsequent contraventions: \$90 000
cl. 7.9.7	C	first contravention: \$45 000 subsequent contraventions: \$90 000
cl. 7.9.9	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 7.9.10	C	first contravention: \$45 000 subsequent contraventions: \$90 000
cl. 7.9.11(a)	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 7.10.1	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 7.10.3	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 7.10.6	C	first contravention: \$35 000 subsequent contraventions: \$70 000
cl. 7.11.7	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 7.11.9	C	first contravention: \$30 000 subsequent contraventions: \$60 000

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Provision	Category	Maximum civil penalty amounts
cl. 8.1.3	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
cl. 8.3.1	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
cl. 8.3.3	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
cl. 8.3.5	B	first contravention: \$25 000 subsequent contraventions: \$50 000
cl. 8.4.1	B	first contravention: \$25 000 subsequent contraventions: \$50 000
cl. 8.5.2	B	first contravention: \$20 000 subsequent contraventions: \$40 000
cl. 8.8	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
cl. 9.1.2(e)	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
cl. 9.3.2	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
cl. 9.22.5	B	first contravention: \$20 000 plus a daily amount of \$5 000 subsequent contraventions: \$40 000 plus a daily amount of \$5 000

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Provision	Category	Maximum civil penalty amounts
cl. 9.23.3	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
cl. 9.24.7	C	first contravention: \$40 000 plus a daily amount of \$5 000 subsequent contraventions: \$80 000 plus a daily amount of \$10 000
cl. 10.1	B	first contravention: \$25 000 subsequent contraventions: \$50 000
cl. 10.2.4	B	first contravention: \$25 000 subsequent contraventions: \$50 000

**Schedule 2 — Reviewable decisions and
procedural decisions**

[r. 41]

1. Reviewable decisions

For the purposes of regulation 41(2), the following provisions are listed: r. indicates a provision of these regulations and cl. indicates a provision of the market rules.

Table

r. 31(1)	cl. 2.37.1
cl. 2.3.7	cl. 2.37.2
cl. 2.5.9	cl. 2.37.3
cl. 2.6.4(f)	cl. 2.37.6
cl. 2.7.8(e)	cl. 2.37.7
cl. 2.10.13	cl. 4.9.9
cl. 2.10.14	cl. 4.16.1
cl. 2.13.28	cl. 4.27.7
cl. 2.28.16	cl. 4.28.7
cl. 2.30.4	cl. 5.2.6

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cl. 2.30.8	cl. 5.2.7
cl. 2.31.10	cl. 5.3.6
cl. 2.34.7	cl. 10.2.1
cl. 2.34.11	

2. Procedural decisions

For the purposes of the definition of “procedural decision” in regulation 41, the following provisions of the market rules are listed.

Table

cl 2.5.9	cl. 2.10.13
cl 2.6.4(f)	cl. 2.10.14
cl 2.7.8(e)	

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By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.



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