

Western Australia

Energy Industry (Rule Change Panel) Regulations 2016

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Electricity Industry Act 2004
Gas Services Information Act 2012

Energy Industry (Rule Change Panel) Regulations 2016

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Energy Industry (Rule Change Panel) Regulations 2016*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day after that day.

3. Terms used

In these regulations —

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

confidential information means information given to the Rule Change Panel under an obligation under a written law, the GSI rules or the market rules —

- (a) that is specified to be confidential by the person who provided it (unless it is not reasonable in the circumstances to so specify the information); or
- (b) that by its nature is confidential; or

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- (c) that is classified as confidential under the GSI rules or the market rules;

executive officer means the executive officer made available by the Authority under regulation 23;

GSI rules means rules made under the *Gas Services Information Regulations 2012* Part 3;

market participant means —

- (a) a participant as defined in the *Electricity Industry Act 2004* section 121(2); or
- (b) a gas market participant as defined in the *Gas Services Information Act 2012* section 3(1);

market rules has the meaning given in the *Electricity Industry Act 2004* section 123(1);

Rule Change Panel means the body established under regulation 4;

staff member has the meaning given in the *Economic Regulation Authority Act 2003* section 3.

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Rule Change Panel

Part 2

Establishment

Division 1**r. 4****Part 2 — Rule Change Panel****Division 1 — Establishment****4. Rule Change Panel established**

- (1) A body called the Rule Change Panel is established.
- (2) The Rule Change Panel consists of 3 members appointed by the Minister.
- (3) Each member of the Rule Change Panel is to be a natural person.

5. Remuneration and allowances

- (1) A member of the Rule Change Panel is entitled to the remuneration and allowances, if any, that the Minister may from time to time determine on the recommendation of the Public Sector Commissioner.
- (2) The remuneration and allowances and conditions of office of a member of the Rule Change Panel must not be varied, while the member is in office, so as to become less favourable to the member.

Division 2 — Functions and powers**6. Functions**

The Rule Change Panel has the functions conferred on it by —

- (a) the *Electricity Industry (Wholesale Electricity Market) Regulations 2004*; and
- (b) the *Gas Services Information Regulations 2012*; and
- (c) the GSI rules; and
- (d) the market rules.

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7. Powers

The Rule Change Panel has all the powers it needs to perform its functions.

8. Delegation

The Rule Change Panel cannot delegate its functions.

Division 3 — Constitution and proceedings**9. Appointment of members**

- (1) In making appointments to the Rule Change Panel the Minister must, if possible, ensure that each appointment is made after consultation with the chairperson of the Rule Change Panel.
- (2) In making an appointment to the Rule Change Panel the Minister must ensure that the person appointed has experience, skills or qualifications relevant to the functions of the Rule Change Panel.
- (3) Without limiting subregulation (2), experience, skills or qualifications relevant to the functions of the Rule Change Panel include —
 - (a) knowledge of the electricity or gas industry including the electricity or gas markets;
 - (b) knowledge of the legislation relevant to the electricity or gas industry;
 - (c) tertiary qualifications including in engineering, economics, finance or law;
 - (d) experience in the electricity or gas industry in engineering, economics, finance, law or senior management;
 - (e) experience or qualifications in public policy or public administration.

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- (4) The following persons are not eligible to be appointed as members of the Rule Change Panel —
- (a) the executive officer;
 - (b) a member (as defined in the *Economic Regulation Authority Act 2003* section 3) of the Authority;
 - (c) a person who is employed in the Public Service;
 - (d) a market participant;
 - (e) a person who is employed or engaged by a market participant.

10. Chairperson

The Minister is to designate one member of the Rule Change Panel to be the chairperson of the Rule Change Panel.

11. Term of office

- (1) Subject to subregulation (2), a member of the Rule Change Panel holds office for the period, not exceeding 4 years, specified in the appointment.
- (2) A member of the Rule Change Panel whose term of office expires without a person having been appointed to fill the vacancy continues in office (unless the person resigns or is removed from office) until a person is appointed to fill the vacancy.
- (3) A member of the Rule Change Panel is eligible for reappointment once.
- (4) A member of the Rule Change Panel need not be appointed on a full-time basis.

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12. Casual vacancies

- (1) In this regulation —
insolvent means a person who is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws.
- (2) A member of the Rule Change Panel may resign from office by notice in writing given to the Minister.
- (3) The Minister may remove a member of the Rule Change Panel from office on the grounds of —
 - (a) mental or physical incapacity to carry out the member's duties in a satisfactory manner; or
 - (b) the member being an insolvent; or
 - (c) neglect of duty; or
 - (d) misconduct; or
 - (e) incompetence; or
 - (f) the member being a person referred to in regulation 9(4); or
 - (g) the member's absence, without leave or reasonable excuse, from 3 consecutive meetings of the Rule Change Panel of which the member had notice.
- (4) If, before the term of office for which a person was appointed as a member of the Rule Change Panel expires, the person dies, resigns or is removed from office, the office becomes vacant.

13. Alternate members

- (1) The Minister may in writing appoint a person to act temporarily in place of a member of the Rule Change Panel who is unable to act.
- (2) While acting in accordance with the appointment the alternate member is taken to be, and to have any relevant entitlement of, a member of the Rule Change Panel.

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Division 3**r. 14**

- (3) An act or omission of an alternate member is not to be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.
- (4) If a member of the Rule Change Panel (the *member*) is unable to act in relation to a matter because of regulation 21(1), an alternate member may act in relation to that matter even though the member is at the same time acting in relation to another matter.

14. Quorum

Three members of the Rule Change Panel constitute a quorum of the Rule Change Panel.

15. Presiding at meetings

- (1) The chairperson if present is to preside at a meeting of the Rule Change Panel.
- (2) If the chairperson is not presiding, the members of the Rule Change Panel present at the meeting are to appoint one of their number to preside.

16. Voting

- (1) At a meeting of the Rule Change Panel each member of the Rule Change Panel present has a deliberative vote unless regulation 21(1) prevents the member from voting.
- (2) A question is resolved according to how a majority of the votes are cast.

17. Telephone and video meetings

The presence of a person at a meeting of the Rule Change Panel need not be by attendance in person but may be by that person and each other person at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

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18. Resolution without meeting

A resolution in writing signed or otherwise assented to in writing by 3 members of the Rule Change Panel has the same effect as if it had been passed at a meeting of the Rule Change Panel.

19. Minutes and records

The Rule Change Panel must ensure that an accurate record is kept of —

- (a) the proceedings at each meeting of the Rule Change Panel; and
- (b) each resolution made under regulation 18.

20. Disclosure of material personal interest

- (1) A member of the Rule Change Panel who has a material personal interest in a matter being considered or about to be considered by the Rule Change Panel must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest to each other member of the Rule Change Panel.

Penalty for this subregulation: a fine of \$6 000.

- (2) If a disclosure under subregulation (1) is not made in person at a meeting of the Rule Change Panel, it must be made in writing.

21. Voting by interested member

- (1) A member of the Rule Change Panel who has a material personal interest in a matter being considered or about to be considered by the Rule Change Panel —
 - (a) must not vote, whether at a meeting or under regulation 18, on the matter; and
 - (b) must not be present while the matter is being considered at a meeting.

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Administrative support for Rule Change Panel **Division 4**
r. 22

- (2) Subregulation (1) does not apply if the Rule Change Panel has at any time passed a resolution that —
 - (a) specifies the member of the Rule Change Panel, the interest and the matter; and
 - (b) states that the members of the Rule Change Panel voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.
- (3) A reference in subregulation (1)(a) or (b) to a matter includes a reference to a proposed resolution under subregulation (2) in respect of the matter.
- (4) Despite regulation 14, a resolution under subregulation (2) is passed if 2 members of the Rule Change Panel vote for it.
- (5) The Minister may in writing declare that subregulation (1) does not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (6) The Minister must, within 14 days after a declaration under subregulation (5) is made, cause a copy of the declaration to be laid before each House of Parliament or dealt with in accordance with regulation 30.

22. Rule Change Panel to determine own procedures

The Rule Change Panel may determine its own procedures except to the extent that its procedures are set out in —

- (a) these regulations; or
- (b) the GSI rules; or
- (c) the market rules.

Division 4 — Administrative support for Rule Change Panel

23. Authority to provide administrative support

- (1) There is to be an executive officer of the Rule Change Panel.

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- (2) The Authority must —
- (a) make available the executive officer and any other staff member whose assistance the Rule Change Panel may reasonably require; and
 - (b) make available the services and facilities that the Rule Change Panel may reasonably require on the terms agreed to by the Rule Change Panel and the Authority; and
 - (c) provide any other assistance the Rule Change Panel or the members of the Rule Change Panel may reasonably require for the Rule Change Panel to perform its functions.
- (3) It is a function of the Authority to —
- (a) make available the executive officer, staff members, services and facilities referred to in subregulation (2); and
 - (b) provide the assistance referred to in subregulation (2).

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r. 24

**Part 3 — Accountability and relationship of Rule
Change Panel with Minister**

24. Consultation

The Rule Change Panel and the Minister, at the request of either, are to consult together, either directly or through appropriate representatives, in relation to any aspect of the Rule Change Panel's operations.

25. Directions by Minister

- (1) The Minister may give written directions to the Rule Change Panel as to the general policy to be followed in the performance of the Rule Change Panel's functions.
- (2) The Minister must not give a direction under subregulation (1) that is —
 - (a) in respect of a particular matter; or
 - (b) inconsistent with the objectives set out in the *Electricity Industry Act 2004* section 122(2) or the *Gas Services Information Act 2012* section 6.
- (3) The Rule Change Panel must comply with a direction under subregulation (1) when it becomes effective.
- (4) A direction under subregulation (1) becomes effective on the expiry of 7 days after the Rule Change Panel receives it or of any longer period that the Minister may determine.
- (5) The Minister must, within 14 days after giving a direction under subregulation (1), cause a copy of the direction to be laid before each House of Parliament or dealt with in accordance with regulation 30.

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26. Minister to have access to information

- (1) In this regulation —
document includes any tape, disk or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;
information means information specified, or of a description specified, by the Minister that relates to the functions of the Rule Change Panel.
- (2) Subject to subregulation (6), the Minister is entitled —
 - (a) to have information in the possession of the Rule Change Panel; and
 - (b) if the information is in or on a document, to have, and make and retain copies of, that document.
- (3) For the purposes of subregulation (2), the Minister may —
 - (a) request the Rule Change Panel to give the Minister information; or
 - (b) request the Rule Change Panel to give the Minister access to information; or
 - (c) make use of the services of the executive officer and other staff members referred to in regulation 23, to obtain the information and give it to the Minister.
- (4) A request under subregulation (3)(a) or (b) may specify a time before which the information or access must be given.
- (5) The Rule Change Panel must comply with a request under subregulation (3).
- (6) Subregulation (2) does not entitle the Minister to information that the Rule Change Panel considers to be commercially sensitive or confidential unless the disclosure of the information —
 - (a) is required under another written law; or

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r. 27

- (b) is made with the written consent of the person or persons to whom the information relates.

27. Minister to be kept informed

The Rule Change Panel must keep the Minister reasonably informed of the operations of the Rule Change Panel.

28. Activities report

- (1) Within 2 months after 30 June in each year, the Rule Change Panel must prepare and give to the Minister a report (the *activities report*) on the general activities of the Rule Change Panel during the financial year ending on that day.
- (2) The Minister must within 21 days after the day on which a copy of the activities report is given to the Minister cause a copy of the report to be laid before each House of Parliament or dealt with in accordance with regulation 30.

29. Information to Authority

The Rule Change Panel must give the Authority any information that the Authority may require to comply with its obligations under the *Financial Management Act 2006*.

30. Laying before House of Parliament that is not sitting

- (1) If at the commencement of a period referred to in regulations 21(6), 25(5) and 28(2) in respect of a document, a House of Parliament is not sitting and the Minister is of the opinion that that House will not sit during that period, the Minister must transmit a copy of the document to the Clerk of that House.
- (2) A copy of a document transmitted to the Clerk of a House is to be regarded as having been laid before that House.
- (3) The laying of a copy of a document that is regarded as having occurred under subregulation (2) is to be recorded in the

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Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

31. Deletion of confidential or commercially sensitive information

- (1) The Rule Change Panel may request the Minister to delete from a copy of a document that is to be made public any information that the Rule Change Panel considers to be confidential or commercially sensitive.
- (2) The Minister may, despite regulations 21(6), 25(5) and 28(2), comply with a request under subregulation (1).
- (3) A copy of a document from which any information has been deleted under subregulation (2) must —
 - (a) contain a statement detailing the reasons for the deletion at the place in the document where the information deleted would otherwise appear; and
 - (b) be accompanied by an opinion from the Auditor General stating whether or not the information deleted is confidential or commercially sensitive.

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Protection of information

Part 4**r. 32****Part 4 — Protection of information****32. Protection of confidential information**

The Rule Change Panel must take all reasonable measures to protect confidential information from unauthorised use or disclosure.

33. Authorised disclosure

- (1) For the purposes of regulation 32, authorised disclosure of confidential information includes the following —
 - (a) disclosure with the written consent of the person to whom the information relates;
 - (b) disclosure that is authorised or required under —
 - (i) these regulations; or
 - (ii) the GSI rules; or
 - (iii) the market rules; or
 - (iv) a written law; or
 - (v) a law of the Commonwealth, a State or a Territory;
 - (c) disclosure required for the purposes of —
 - (i) civil or criminal proceedings; or
 - (ii) proceedings before a tribunal established under a written law or a law of the Commonwealth, a State or a Territory;
 - (d) disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom the information relates;
 - (e) disclosure of information if the information is in the public domain.
- (2) A person or body to whom confidential information is disclosed under subregulation (1)(b) is, to the extent consistent with the

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rules and law referred to in subregulation (1)(b), limited to using the information —

- (a) in connection with the performance of the functions of the person or body; and
- (b) for the purposes for which the information was disclosed.

34. Disclosure and use of information obtained by Rule Change Panel restricted

A member or former member of the Rule Change Panel must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty except —

- (a) for the purpose of, or in connection with, performing a function of a member of the Rule Change Panel; or
- (b) as required or allowed by a written law; or
- (c) for the purposes of any legal proceedings arising under the *Electricity Industry Act 2004* or the *Gas Services Information Act 2012*; or
- (d) with the written consent of the person to whom the information relates.

Penalty: a fine of \$10 000.

R. KENNEDY, Clerk of the Executive Council.
