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**ELECTRICITY INDUSTRY ACT 2004**

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**ELECTRICITY INDUSTRY  
(WHOLESALE ELECTRICITY  
MARKET) REGULATIONS 2004**



Western Australia

## **Electricity Industry (Wholesale Electricity Market) Regulations 2004**

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Electricity Industry Act 2004

## Electricity Industry (Wholesale Electricity Market) Regulations 2004

Made by the Governor in Executive Council.

### Part 1 — Preliminary

**1. Citation**

These are the *Electricity Industry (Wholesale Electricity Market) Regulations 2004*.

**2. Purpose**

These regulations are made for the purpose of establishing the market described in section 122 of the Act (the “**market**”).

**3. Terms used in these regulations**

In these regulations, unless the contrary intention appears —

“**amend**” means replace, in whole or in part, add to or vary, and the doing of any 2 or more of such things simultaneously or by the same instrument;

“**amending rules**” means rules that amend the market rules;

“**IMO**” means the Independent Market Operator established under the *Electricity Industry (Independent Market Operator) Regulations 2004*;

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**“impose requirements”** means to regulate conduct and impose obligations;

**“market procedures”** means procedures to be followed by participants in complying with, or in connection with, the market rules;

**“market website”** means the website maintained under regulation 12(3);

**“registered participant”** means a participant described in section 121(2)(a) of the Act;

**“SWIS”** means the South West interconnected system;

**“specified”** means specified in the market rules;

**“under”**, in relation to the market rules, includes by, in accordance with, pursuant to and by virtue of the market rules.

**4. Effect on earlier regulations and rules**

(1) In this regulation —

**“top-up and spill regulations”** means the *Electricity Industry (Wholesale Market) Regulations 2004*;

**“top-up and spill rules”** has the meaning given to that term in regulation 4 of the top up and spill regulations.

(2) Subject to subregulation (3), these regulations do not affect the top-up and spill regulations or the top-up and spill rules.

(3) When market rules made under these regulations that are expressed to have effect instead of the top-up and spill rules (the **“new rules”**) come into operation —

(a) the top-up and spill rules cease to have effect; and

(b) regulation 5 of the top-up and spill regulations is repealed and references in those regulations to the top-up and spill rules are taken to be references to the new rules.

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**r. 4**

- (4) So far as is consistent with the new rules, all acts, matters and things that are in existence, or in force or operation, under or for the purposes of the top-up and spill rules when they cease to have effect under subregulation (3)(a) —
- (a) subsist and enure for the purposes of the new rules; and
  - (b) continue as if the new rules had been in operation when they originated, or were made or done, and they had originated, or been made or done, under the new rules.

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**Part 2 — The market rules****5. Market rules**

There are to be market rules as described in section 123(1) of the Act (the “**market rules**”).

**6. Market rules: general provisions**

- (1) In this regulation —  
“**market rules**” includes amending rules.
- (2) Subject to regulation 7 market rules are to be made by the Minister.
- (3) Market rules commence at a time fixed —
  - (a) by the market rules; or
  - (b) in a manner provided for by the market rules.
- (4) Different commencement times may be fixed under subregulation (3)(a) for different provisions of market rules.
- (5) Different commencement times may be fixed under subregulation (3)(b) for different provisions of market rules unless those market rules provide otherwise.
- (6) Market rules made by the Minister are to be published in the *Gazette* and are to be laid before each House of Parliament within 10 sitting days of that House next following their publication in the *Gazette*.

**7. Amending the market rules**

- (1) The market rules may provide for matters relating to the initiation, development, making, approval, publication and commencement of amending rules.
- (2) Market rules under subregulation (1) may be made so as to apply to —
  - (a) amending rules of a specified kind; or



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**r. 8**

- (b) amending rules other than rules of a specified kind, and have effect despite regulation 6(2).
- (3) Despite anything in this regulation or the market rules, rules replacing the market rules in whole are to be made by the Minister and regulation 6(6) applies to them.

**8. Availability of copies of the market rules**

The IMO must make a copy of the market rules as in force for the time being available —

- (a) for inspection free of charge at its principal place of business during its ordinary working hours at that place; and
- (b) on the market website.

**9. Market procedures**

- (1) The market rules may provide for matters relating to the initiation, development, formulation, approval, publication and commencement of —
  - (a) market procedures; and
  - (b) amendments of market procedures.
- (2) Until market rules referred to in subregulation (1) are in operation, the Minister may develop, formulate and publish on an internet website selected by the Minister —
  - (a) market procedures; and
  - (b) amendments of market procedures.
- (3) Market procedures referred to in subregulation (2) —
  - (a) have effect from the time specified in them; and
  - (b) continue to have effect after market rules referred to in subregulation (1) are in operation as if they had been published under those market rules.

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**10. Functions of Ministers**

The market rules may confer functions on the Minister and the Minister administering the *Electricity Corporation Act 1994*.

**11. Functions of the Economic Regulation Authority**

The market rules may confer functions on the Authority.

**12. Functions of the IMO**

- (1) The market rules may confer functions and impose requirements on the IMO.
- (2) The IMO is responsible for the administration of the market rules and the market procedures and for the development of amendments of them and replacements for them in accordance with the market rules.
- (3) The IMO is to maintain an internet website for the purpose of publishing and releasing information to participants.
- (4) The market rules may make provision for financial, accounting and governance matters in relation to the performance by the IMO of its functions under the market rules.
- (5) Until 1 January 2005, a function of, or requirement imposed on, the IMO under these regulations or the market rules is to be performed or complied with by a specified entity or, if no entity is specified, by the Minister.

**13. Functions of System Management**

- (1) The market rules are to confer on an entity the function of operating the SWIS in a secure and reliable manner.
- (2) The entity on which the function mentioned in subregulation (1) is conferred is referred to in these regulations as “**System Management**”.

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The market rules

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- (3) The market rules may confer other functions and impose requirements on System Management.
  - (4) System Management must act in a manner consistent with the objectives set out in section 122(2) of the Act.
  - (5) The market rules may make provision for financial, accounting and governance matters in relation to the performance by System Management of its functions under the market rules.
  - (6) The market rules may authorise the IMO and the Authority to give directions to, or impose requirements on, System Management as to the performance of its functions under the market rules and System Management must comply with directions so given or requirements so imposed.

**14. Market rules as to registration**

The market rules may provide for the registration by the IMO of persons engaged, or intending to be engaged, in any of the following activities —

- (a) owning, controlling or operating a generation system that has a rated capacity greater than the specified capacity and supplies electricity to, or is electrically connected to, a transmission system or distribution system of the kind mentioned in paragraph (b);
- (b) owning, controlling or operating a transmission system or distribution system that forms part of, or is electrically connected to, the SWIS;
- (c) selling or purchasing electricity or another service to or from the IMO;
- (d) selling electricity to customers in respect of facilities electrically connected to a transmission system or distribution system of the kind mentioned in paragraph (b);
- (e) administering or operating a wholesale market for the dispatch of electricity generating units or loads.

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**15. Functions of registered participants**

- (1) The market rules may confer functions and impose requirements on registered participants generally, or on registered participants of a specified class or on a specified registered participant.
- (2) The market rules may authorise the IMO, System Management and the Authority to give directions to, or impose requirements on, registered participants generally, or on registered participants of a specified class or on a specified registered participant, and a registered participant must comply with directions so given or requirements so imposed.

**16. Evidence as to registered participants and exemptions**

- (1) A certificate signed by the chief executive officer, an officer or a director of the IMO certifying that a person is a registered participant in relation to an activity is evidence that the person is a registered participant in relation to that activity.
- (2) A certificate signed by the chief executive officer, an officer or a director of the IMO certifying that a person has been granted an exemption under the market rules from the requirement to be registered in accordance with the market rules in relation to an activity is evidence that the person has been so exempted.

**17. Market rules generally**

Without limiting anything else in this Part market rules may provide for —

- (a) the establishment, functions and governance of advisory committees;
- (b) procedures, application fees and other matters relating to registration under the market rules and the suspension or cessation of registration;
- (c) matters relating to participation in the market;
- (d) fees to be paid by registered participants and the payment of those fees;

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## The market rules

**Part 2****r. 17**

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- (e) the resolution of disputes between participants;
  - (f) the monitoring and investigation of compliance with, and the enforcement of, market rules and market procedures;
  - (g) matters relating to the security and reliability of the SWIS and ancillary services;
  - (h) matters relating to the trading of electricity and balancing of electricity supply and demand;
  - (i) matters relating to the procurement, purchase, funding and sustaining of adequate electricity generation capacity and other resources and services on the SWIS;
  - (j) matters relating to the market generally including the dispatch of electricity generating units and other facilities, pricing and price limits, settlements, metering and the recording, retention, provision, release and confidentiality of market information;
  - (k) any other matters that are necessary or convenient to be dealt with for the purpose set out in section 122(1) of the Act and to achieve the objectives set out in section 122(2) of the Act;
  - (l) the suspension of requirements imposed under the market rules or market procedures;
  - (m) the delegation of powers or duties conferred or imposed by the market rules other than the power to —
    - (i) make rules amending the market rules;
    - (ii) formulate market procedures or amendments of market procedures;
- and
- (n) transitional matters.

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**18. Trade practices authorisation**

- (1) In this regulation —  
    **“arrangement”** has the meaning given to that term in section 127(1) of the Act.
- (2) For the purposes of the *Trade Practices Act 1974* of the Commonwealth and the Competition Code, any arrangement, act, matter or thing made, entered into, engaged in, imposed, carried out, given effect to or done in accordance with market rules is specifically authorised.

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Registration requirement **Part 3**

**r. 19**

**Part 3 — Registration requirement**

**19. Registration by IMO required for certain activities**

- (1) On or after the appointed day a person must not engage in an activity mentioned in regulation 14(a), (b), (c) or (d) unless the person is —
- (a) a registered participant in relation to that activity; or
  - (b) the subject of a derogation under the market rules, or otherwise exempt under the market rules, from the requirement to be registered in accordance with the market rules in relation to that activity.

Penalty: \$100 000 and \$10 000 for each day after the day of service on the person by the IMO of notice of the contravention of this subregulation.

- (2) On or after the appointed day a person, other than the IMO or System Management, must not engage in the activity mentioned in regulation 14(e) unless the person is —
- (a) a registered participant in relation to that activity; or
  - (b) the subject of a derogation under the market rules, or otherwise exempt under the market rules, from the requirement to be registered in accordance with the market rules in relation to that activity.

Penalty: \$100 000 and \$10 000 for each day after the day of service on the person by the IMO of notice of the contravention of this subregulation.

- (3) In subregulation (1) or (2) —  
“**appointed day**” means the day fixed by the Minister by order published in the *Gazette*.
- (4) Different days may be fixed under subregulation (3) in respect of different activities.

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**20. Notice of failure to register**

A notice under regulation 19 given by the IMO to a person engaged in an activity in contravention of that regulation must —

- (a) be in writing;
- (b) state the name and address of the person to whom the notice is directed;
- (c) specify the particular provision of regulation 19 that the person is alleged to have contravened;
- (d) provide details of the contravention; and
- (e) state that criminal proceedings may be instituted against the person and that the person, if convicted of the offence, would be liable to a maximum penalty of \$100 000 and \$10 000 for each day that the contravention continues after the day on which the notice is served on the person.



**Electricity Industry (Wholesale Electricity Market) Regulations 2004**

Market costs

**Part 4****r. 21****Part 4 — Market costs****21. Allocation of costs**

- (1) A participant described in section 121(2)(b) or (c) (other than the Minister, the Minister administering the *Electricity Corporation Act 1994* or the Authority) must —
  - (a) implement accounting arrangements to identify costs of the participant in performing functions under the *Electricity Industry (Independent Market Operator) Regulations 2004* or the market rules; and
  - (b) submit costs so identified for approval in accordance with the market rules.
- (2) The IMO must allocate between registered participants in accordance with the market rules —
  - (a) costs identified and approved under subregulation (1); and
  - (b) costs identified by the Minister or the Authority as costs of the Minister or Authority in performing functions under the market rules.
- (3) Costs allocated under subregulation (2) are to be recovered by way of fees to be paid by registered participants under the market rules.

By Command of the Governor,

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







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