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**ELECTRICITY INDUSTRY ACT 2004**

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



Western Australia

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

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### CONTENTS

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1. Citation
2. Commencement
3. Purpose
4. Terms used in these regulations
5. Top-up and spill rules
6. Members of the top-up and spill market
7. Enforcement of obligation in regulation 6(2)
8. Rules to give market service provider certain obligations
9. Consequences of failure to pay for electricity
10. Dispute resolution
11. Rules may deal with ancillary matters
12. Review of decisions



Electricity Industry Act 2004

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

Made by the Governor in Executive Council.

**1. Citation**

These regulations may be cited as the *Electricity Industry (Wholesale Market) Regulations 2004*.

**2. Commencement**

These regulations come into operation on the day on which Part 9 of the *Electricity Industry Act 2004* comes into operation.

**3. Purpose**

The purpose of these regulations is to provide for top-up and spill wholesale market arrangements for the South West interconnected system that are to apply in preparation for the introduction of comprehensive market rules.

**4. Terms used in these regulations**

In these regulations —

“**market member**” means a person who, under the top-up and spill rules, is a member of the top-up and spill market and the term includes the market service provider;

**Electricity Industry (Wholesale Market) Regulations 2004****r. 5**

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**“market service provider”** means the person referred to in regulation 6(2);

**“top-up and spill market”** means the market in top-up and spill electricity conducted under the top-up and spill rules;

**“top-up and spill rules”** means rules published under regulation 5(1).

**5. Top-up and spill rules**

- (1) The Minister may make rules relating to top-up and spill wholesale market arrangements for the South West interconnected system.
- (2) Top-up and spill rules are made by approving of them and publishing them in the *Gazette*.
- (3) Top-up and spill rules commence at the beginning of the day after the day on which they are published in the *Gazette* unless the rules specify that they commence at a later time.

**6. Members of the top-up and spill market**

- (1) The top-up and spill rules have to specify how a person becomes, and how a person ceases to be, a member of the top-up and spill market other than the market service provider.
- (2) Western Power Corporation is to perform the functions of the market service provider for the purposes of these regulations and the top-up and spill rules.
- (3) Without limiting the other things about which top-up and spill rules may be made, the top-up and spill rules may —
  - (a) specify conditions required to be met and procedures required to be followed for a person to become, or to cease to be, a member of the top-up and spill market;

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

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**r. 7**

- (b) specify rights and obligations of a person that continue, or result in other rights or obligations, after the person ceases to be a member of the top-up and spill market, with or without specifying limits as to the time for which, or the extent to which, the person has those rights and obligations.

**7. Enforcement of obligation in regulation 6(2)**

- (1) If, in the opinion of the Minister, Western Power Corporation (“**the corporation**”) fails to comply with the obligation in regulation 6(2), the Minister may, subject to subregulation (2), do either or both of the following —
  - (a) serve a letter of reprimand on the corporation; or
  - (b) by written notice, order the corporation to pay a monetary penalty fixed by the Minister of not more than \$100 000 with or without a daily penalty of not more than \$20 000.
- (2) The Minister is not to take action under subregulation (1)(b) unless the Minister has —
  - (a) notified the corporation of the proposed action and the reasons for it; and
  - (b) given the corporation a reasonable opportunity to make submissions on the matter.
- (3) The Minister may recover a penalty imposed under subregulation (1)(b) in a court of competent jurisdiction as a debt due by the corporation to the State.

**8. Rules to give market service provider certain obligations**

- (1) The top-up and spill rules have to oblige the market service provider to —
  - (a) manage and operate the top-up and spill market;

***Electricity Industry (Wholesale Market) Regulations 2004*****r. 9**

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- (b) sell top-up electricity to a member of the top-up and spill market in circumstances, and on terms and conditions, specified in those rules and at a price the market service provider selects in accordance with the rules from the prices published as referred to in paragraph (d);
  - (c) buy spill electricity from a member of the top-up and spill market in circumstances, and on terms and conditions, specified in those rules and at a price the market service provider selects in accordance with the rules from the prices published as referred to in paragraph (d);
  - (d) fix, and publish in accordance with those rules, the prices at which it will, as required by those rules, buy and sell electricity and provide other market services; and
  - (e) observe principles specified in those rules in fixing the prices to which paragraph (d) refers.
- (2) The top-up and spill rules have to specify audit procedures for determining whether the prices fixed under rules made under subregulation (d) accord with the principles specified in rules made under subregulation (e), and may specify audit procedures for other matters.

**9. Consequences of failure to pay for electricity**

- (1) The top-up and spill rules may provide for action that may be taken if —
- (a) the market service provider does not pay for electricity that it buys as required by the rules; or
  - (b) any other market member does not pay for electricity that the market service provider sells to the market member as required by the rules.

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

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**r. 10**

- (2) Nothing in this regulation or the rules affects the right of a person to recover an amount owed for the sale of electricity as a contractual debt.

**10. Dispute resolution**

- (1) The top-up and spill rules have to provide for the resolution of disputes between market members, and for that purpose may confer functions on the Western Australian Gas Disputes Arbitrator appointed under the *Gas Pipelines Access (Western Australia) Act 1998* section 62.
- (2) Rules made for the purpose described in subregulation (1) may deal with the procedures that are to apply to the resolution of disputes, and the rules may operate by reference to the provisions of any written law.

**11. Rules may deal with ancillary matters**

The authority that these regulations give to deal with a matter in the top-up and spill rules includes authority to deal with anything ancillary to the matter.

**12. Review of decisions**

Every decision that a participant referred to in section 121(2)(b) or (c) of the Act makes under the top-up and spill rules or a regulation is specified under section 125(1) of the Act.

By Command of the Governor,

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

