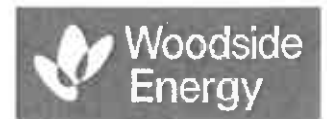


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29 November 2024

Ms Naomi Menon
Director, Competition Exemptions
Australian Competition and Consumer Commission
Level 27, 135 King Street
Sydney NSW 2000

Ms Elizabeth Batten
Assistant Director
Australian Competition and Consumer Commission
Turbot Street
Brisbane QLD NSW 4000

By email: naomi.menon@acc.gov.au / elizabeth.batten@acc.gov.au

Dear Ms Menon and Ms Batten

Submission – Pilbara ISOCo Pty Ltd authorisation application (Ref: AA1000666)

Thank you for the opportunity to provide comments on the ACCC's revised draft conditions of 26 November 2024, in relation to the authorisation application submitted by Pilbara ISOCo Ltd (*Pilbara ISOCo*).

Woodside has reviewed the revised draft conditions and provides its detailed comments in Annexure A.

Woodside understands revisions were made in response to some issues raised in relation to the workability of the originally proposed draft authorisation conditions. However, Woodside considers that the workability of the conditions needs to be balanced against potential competition impacts, including potential impacts on third party access to the NWIS, if the conditions are not sufficiently robust.

Woodside also understands that it is currently the only third party access-seeker in the NWIS, and the only third party proponent of a grid connected renewable energy project. Given the diverging asset bases between the vertically-integrated NSPs in the Pilbara (which have significant non-renewable energy interests) and the interests of new proponents of grid connected renewable energy generation and supply, Woodside notes that the interests of NSPs engaged in respect to applications for access to the NWIS may not necessarily be aligned with those of renewables proponents (such as Woodside) seeking to gain access. Robust authorisation safeguards can help mitigate such potential issues.

The safeguards are particularly important given the evolving regulatory reforms proposed by EPWA in the Pilbara Network Rules, Pilbara Network Access Code and Harmonised Technical Rules. As the ACCC is aware, EPWA's reform process could see a significant expansion of Pilbara ISOCo's role in the next three years. The scope of commercially sensitive information and matters that Pilbara ISOCo manages is likely to increase substantially, relative to what is currently understood, during the proposed authorisation period.

In that context, Woodside does not support changes to the conditions that would reduce safeguards for the protection of commercially sensitive information and decision-making transparency, which could impact on potential competition and access in the NWIS.

Woodside would be pleased to assist with any further queries the ACCC may have.

Yours sincerely



Reece Tonkin
Acting Head of Woodside Power

Annexure A – Observations on revised draft conditions

Proposed Condition	Comment on revised
Proposed Conditions 2, 3 and 4	<p>Woodside notes the addition of the qualifying words of '<i>In the course of engaging in the Conduct</i>' to these conditions.</p> <p>In Woodside's view, these qualifying words are not needed and may limit the utility of the proposed conditions. The issues that the conditions are seeking to address may arise whether or not Pilbara ISOCO and / or the Participants do (or do not do, as applicable) the things described in the conditions during the course of engaging in the Proposed Conduct.</p> <p>Woodside submits that these qualifying words should be removed to bolster the conditions.</p>
Proposed Condition 4	<p><i>Removal of limb 2</i></p> <p>The removal of previously drafted limb 2 raises the risk that employees / contractors of a Participant may have access to commercially sensitive information disclosed by a third party, in circumstances where the employee / contractor is involved in two or more concurrent roles some of which may compete with that third party.</p> <p>This risk arises notwithstanding that the condition requires the information to be used only when reasonably required for engaging in the Proposed Conduct. This is because a person in concurrent roles may have access to the sensitive information, particularly in circumstances where it is difficult to monitor and confirm that the relevant persons are using the information solely for the permitted purpose.</p> <p>Woodside therefore submits that limb 2 should be reinstated, to prevent access to such information by employees / contractors with day to day responsibility for making decisions on pricing, marketing, capacity, production volumes or other business development opportunities (each of which may compete with a third party who has provided sensitive information).</p> <p><i>Permitted disclosure to third parties</i></p> <p>The permitted disclosure if '<i>allowed under the Pilbara regime or under any law</i>' is too broad. Woodside submits this reference should be updated to '<i>as required under law</i>', ie, disclosure of such information is only permissible if it is required.</p>
Proposed Condition 6	<p><i>Paragraph (a) – potentially limiting words</i></p> <p>The record-keeping obligation should extend to any contracts, arrangements or understandings (<i>CAU</i>) made in relation to system security, outages, or technical connection.</p> <p>The inclusion of the words 'measures', 'co-ordination' and 'standards' unduly narrows the obligation. For example there is potential for an arrangement to be entered into regarding technical connections that can adversely affect a third party access-seeker, but that is not strictly in relation to technical connection 'standards'.</p> <p><i>Inclusion of qualification as to 'materially adversely affected'</i></p>

The qualification in paragraph (b) that a Participant's interests must be 'materially adversely affected' leaves the obligation open to subjective interpretation of these matters, which limits the condition's utility.

Instead, the threshold for whether records of a CAU must be provided should be objective, and not left open to Pilbara ISOCO to determine.

Woodside therefore submits that instead of only Participants who Pilbara ISOCO 'identifies, after reasonable due diligence as having their interests material adversely affected' receiving a relevant record, all 'impacted' Participants should receive the relevant record. This will better support compliance and achieve a key purpose of the condition which is to provide transparency to impacted third parties.

Disclosure relief 'where otherwise made known to the affected Participant'

In Woodside's view, the reference to Condition 6 not requiring Pilbara ISOCO and any Participants to make or keep records of a CAU 'where otherwise made known to the affected Participant under the Pilbara regime' is unclear as it appears to be independent from the preceding reference to making or keeping records of a CAU of 'routine operational activities carried out in the course of the performance of their functions'. It may lead to inconsistent disclosure, as it does not identify when such alternative disclosure would apply. Woodside's view is the wording could be clarified by amending to 'or otherwise provided to the Participant in compliance with the Pilbara Regime' such that the only times when 6(b) does not need to be followed is when a specific overlapping disclosure requirement applies.

Transitional Period

Finally, it is unclear why a transitional period to 31 March 2025 is required for this condition, and how Participants should operate in the interim. In Woodside's view the condition should apply as and when the ACCC's authorisation takes effect.