

Manager, MCE Secretariat  
Department of Resources, Energy and Tourism Energy  
By email: [MCEMarketReform@ret.gov.au](mailto:MCEMarketReform@ret.gov.au)



6 October 2009

Dear Sir / Madam

**RE: Draft Plan and Consultation RIS on the harmonisation of energy supply industry technical and safety regulation**

I refer to the Energy Market Reform Bulletin No 165, which seeks written submissions on the Draft Plan.

Horizon Power is responsible for generating, procuring, distributing and retailing electricity in many of the fastest growing regional centres of Western Australia. We are a commercially focussed, State Government-owned business striving to meet the needs of residential, industrial and commercial electricity customers and resource developments in our service area.

Horizon Power supplies regional and remote consumers outside of the south west corner of the State, which is served by the South-West Integrated System (SWIS). We manage one major interconnected system, the North West Interconnected System (NWIS), and a growing number of non-interconnected systems in regional towns and remote communities.

The NWIS covers a large geographical area surrounding the coastal Pilbara towns of Port Hedland and South Hedland, Cape Lambert, Roebourne, Karratha and Dampier and extends south-east to the iron ore mining townships of Newman and Paraburdoo, and eastward as far as Shay Gap.

At the end of the 2007-08 financial year (June 2008), Horizon Power owned and maintained the distribution assets and generated and sold energy to 34 non-interconnected systems, covering townships and remote communities spread throughout regional WA.

Services are tailored to meet the specific needs of customers ranging from power-hungry resource developers to remote and isolated communities. Growth in and around the Pilbara continues, and the profile of the NWIS changes accordingly. The NWIS is expected to exceed the capacity of the SWIS in the near future.

These factors present a reasonably unique and diverse set of challenges for the management of risks to the safety of our employees and customers.

Horizon Power welcomes this initiative of the MCE to achieve a harmonised national framework of best practice regulation to ensure public and worker safety in the energy sector.

I enclose some detailed comments against certain areas of the draft plan. I also wish to raise that our preference is that the ENSS regime be sufficiently flexible to accommodate a single ENSS application, approval and review process for each of the vertical dimensions of our business operations.

Please do not hesitate to contact me should you require further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Pete Feldhusen', with a stylized flourish at the end.

Pete Feldhusen  
Company Secretary / General Manager  
Governance & Company Secretariat

## **Appendix A - Horizon Power comment on matters raised in the Draft Harmonisation Plan**

### **Regulatory framework: Energy Network Safety Scheme (ENSS) – legislation and a new Australian Standard & Mandatory Requirements (paragraphs 14-20)**

Paragraphs 19 and 20 called for comment on the use of mandatory requirements as follows:

19. *A key issue for stakeholder comment is the debate about whether or not to have a limited number of safety critical mandatory requirements called up in the legislation and standard, but noting that the bulk of the ENSS standard is to be performance based. The Leaders Group remains divided on this matter and seeks further critical stakeholder comment.*
20. *The Leaders Group considers the key to resolving this issue is to determine what is the criteria, basis or safety reason for having mandatory requirements, if any, referenced in legislation. Currently there exist a limited number of prescriptive mandatory requirements in some States and Territories relating to critical safety issues (for example powerline exclusion zones ground clearances; vegetation clearance; and bushfire mitigation).*

Horizon Power supports having legislation that guides the determination of whether to have mandatory requirements. Horizon Power also considers that including a small number of safety related mandatory standards in the Energy Network Safety Scheme (ENSS) or Safety Case, with the rest being performance based, is preferable to ensure that regulation strikes an appropriate balance.

In our view, the examples of critical safety issues for which mandatory requirements already exist appear to be the appropriate matters for mandatory standards under the new regime (being power line exclusion zones, ground clearances, vegetation clearances, bushfire mitigation etc).

Horizon Power considers that it is appropriate to legislate for explicit, measurable and enforceable requirements for matters that are critical to safety. Prescriptive regulation is appropriate in these instances, particularly because it can reduce business uncertainty, provided it is well-designed. Further, mandatory standards for the example areas raised above may assist energy businesses when dealing with operational issues, such as easements and local and state government permits for clearance.

For matters that have a more subjective bearing on safety, performance based criteria is generally the most appropriate form of regulation.

### **Validation and Certification / Acceptance of an Energy Networks Safety Scheme**

Paragraphs 21-22 consider the certification model as follows:

21. *The Leaders Group's approach to the Validation and Acceptance/Certification of an ENSS has been revised significantly since the release of the Discussion Paper.*
22. *The Leaders Group draft recommendation for certification is that a third-party independent validator or regulator may first validate an ENSS; however, the regulator may seek amendment or change. The network operator and the regulator must agree on what third-party independent validator is commissioned to validate the ENSS*

Horizon Power agrees with the Leaders Group draft recommendation (paragraph 21) for ENSS certification by an independent third party validator, with the regulator retaining the ability to seek amendment or change. We note that this model is essentially how the WA Energy Safety model is operated, and that it has worked well in this jurisdiction.

We note that comments on this matter are also sought at paragraph 177. For the avoidance of doubt, Option 2, *Independent Validation*, as set out in paragraphs 170-174, is Horizon Power's preferred model.

### **Small and Isolated Networks**

Paragraph 24 considers ENSS requirements for small, isolated and embedded generation networks as follows:

24. *The Leaders Group recommends that all networks are to comply with an ENSS regardless of size, as has been the practice in the gas industry and shown to be effective. In the case of small networks, it is considered that a simple ENSS may be applied, i.e. the ENSS requirements would be sufficiently scalable (and the compliance regime sufficiently flexible) to cover both large and small networks. "Embedded networks" on single premises that may fall out of the definition of distribution networks will need to be considered separately.*

Horizon Power understands that the circumstances referred to above relate to situations where there is just the one generation station and a small network. While Horizon Power has a number of small isolated systems they are all covered by the one set of operational systems, processes and procedures.

Horizon Power considers that the requirements must be drafted in a way that accommodates including such systems in a single ENSS, as we already do in our draft Safety Case.

If the regulatory regime was to, for example, require that separate documentation and validation be required individually for each of our small isolated systems, this could impose significant and unwarranted compliance costs that may ultimately be detrimental to safety outcomes.

More broadly, Horizon Power notes the detailed discussion of these matters in the Draft Plan at paragraphs 178-9 and agrees that all networks (regardless of size) should be required to comply with an ENSS, providing the ENSS is scalable and sufficiently flexible to cater for the requirements of a small network.

### **Standards development**

Paragraph 26 of the Draft called for comment on the standards development process as follows:

- 26 *There is support by the Leaders Group and stakeholders to aim for the development of the supportive normative documentation for the framework with the highest levels of community acceptance – in this case Australian Standards. Consequently, the Leaders Group supports the new ENSS standard being an Australian Standard. However, under Standards Australia's new business model there are a number of pathways for the standards development. Comment is sought on which pathway would be most appropriate for the development of the ENSS standard for electricity and what representation should be held on the body to develop the standard.*

Horizon Power considers that having the ENSS as an Australian Standard is the best option to ensure universal application and, ideally, acceptance.

In terms of the pathways for development articulated by Standards Australia, the second option referred to at paragraph 187 of the Draft Plan - *Collaborative*, has an initial appeal in helping gain credibility and acceptance of the output. We understand that this would entail a jointly funded partnership arrangement using consultants sharing responsibilities with Standards Australia, and using the Standards Australia structure, processes and procedures.

In terms of representation, the industry should maintain a strong role in the standards development process and Leaders Group. Involvement in driving and coordinating the process would be necessary to ensure legitimacy and appropriateness of the final standard(s).

Consultation processes that specifically seek input from a broad representation from regulators and litigators, as well as technical / engineering and compliance management experts, appear warranted to ensure that the breadth of issues affecting its appropriateness, application and enforceability are canvassed and inform its development.

### **Scope of the Draft Plan**

Paragraphs 68-72 consider the scope of the Draft Plan and observe that electricity generation and gas plants have been excluded by the Leaders Group from the energy technical and safety regulations.

Horizon Power agrees that electricity generation plant does not present the same high level of public safety risk as a network. Accordingly, there seems to be less need for electricity generation in the final plan.

However, this does not mean that generation asset management plans should not follow the appropriate safety elements of a Safety Case. As a matter of good business practice and consistent with our duty of care for employees, all the corporate elements of our draft network Safety Case already apply to the generation area. As a vertically integrated energy business Horizon Power integrates its compliance arrangements across all our operational areas.

In relation to the request for stakeholder comment on whether measures should be taken to harmonise energy regulation not covered by the model National OHS Act for generators and gas plants, Horizon Power notes that generation specific asset management and work practices and procedures are areas that would require some additional reworking.

Paragraph 73 requests further comments on scope, as follows:

- 73 *The Draft Plan principally covers the harmonisation of the technical and safety regulation of gas and electricity network operators, but not consumer installations and appliances. That is, the scope covers all network assets, broadly defined. The energy retail sector is considered to be outside the scope of the Draft Plan as its workplaces are expected to be covered by the model National OHS Act<sup>3</sup>. However, the Leader Group welcomes further comment on this scope and its potential impacts on related technical requirements currently included in State and Territory regulations.*

Horizon Power considers that excluding consumer installations and appliances seems appropriate for the present as there is already a great deal of mutual recognition/standardisation across jurisdictions in these areas.

Paragraphs 78 to 79 concern whether reliability or service quality should be included as matters, which need to be addressed as part of their development of a safety case, observing:

#### ***Stakeholder Feedback***

...

*Some stakeholders reported that in addition to safety and technical issues, some jurisdictions' safety management systems include reliability and maintenance as matters which need to be addressed as part of the development of their safety case<sup>4</sup>.*

*79. The Leaders Group considers only those matters covered by the proposed ENSS is within the scope of the ESI legislative framework. At this stage, the ENSS will not cover regulatory aspects such as reliability and performance. During the implementation phase, great care will be needed in drafting legislation to ensure proper separation between those aspects covered and those excluded from the proposals in the Draft Plan.*

Horizon Power agrees that the ENSS should focus on safety related matters and not include supply reliability or quality which are essentially performance issues rather than a safety issue. Delineation of regulatory roles and responsibilities is important to ensure that regulation remains fit-for-purpose.

Overlapping regulatory requirements may result in increased business compliance costs, but may also have a detrimental effect on the regulator's administration of the law (e.g. through unclear divisions of responsibility, both gaps and areas of overlap may emerge). Leaders Group initiatives to delineate the ENSS are therefore welcomed by Horizon Power.

#### **Benefits of Harmonisation**

Paragraph 106 concerns the gains in both efficiency and safety outcomes by harmonising the regulatory arrangements. One of the sub-points is as follows:

*... Should industry harmonise at an operational level there are significant benefits including:*

*Common components – lowering cost of components through competition, having spare parts as well as spare people available to cater for emergencies; (emphasis added).*

Horizon Power notes that the 'common components' benefit may not be realisable in practice. Factors affecting the commonality, or lack thereof, of components include the:

- ongoing introduction of technology and improved materials; and
- need for financial prudence to ensure the best value for money purchasing by network operators, which may entail maintenance of inventories at appropriate levels.

This might create legitimate timing differences in achieving commonality.

Horizon Power notes that operational harmonisation may not lead directly to having spare parts available to cater for emergencies, and accordingly, if this is an objective of government, government would be advised to consider an alternative means.

### **Two-Tiered Implementation of the Proposed Framework**

Paragraph 141 provides as follows:

*Stakeholder comments are sought on whether it is desirable to adopt a two tiered approach to implementation where, in the first tier, the proposed overarching legislation, worker mobility initiatives and governance arrangements would apply to both gas and electricity supply sectors equally and fully. While, in the second tier, specific sector issues can be dealt with, particularly initially the development of a national electricity network ENSS standard.*

Horizon Power considers the two tiered approach set out in the comment box after paragraph 141 and illustrated in Figure 2 is the most desirable approach.

### **Legislative Implementation**

Paragraphs 189-197 concern the legislative architecture.

Horizon Power considers that *Option 1 – to introduce legislation into a single State or Territory Parliament with a schedule to be adopted nationally* is preferable to each State or Territory introducing its own legislation based on model legislation, for reasons similar to those identified in paragraphs 193-5.

Option 1 provides the required level of business certainty and would, through the operation of application acts, ensure a consistent national framework is maintained and reduce a significant source of duplication of bureaucratic effort. Any ‘delays due to parliamentary cycles’ could be expected to pale in comparison to the difficulties of maintaining consistent national regulatory obligations entailed by Option 2.

### **Proposed Governance Arrangements: Enforcement and Compliance Bodies**

Paragraphs 241-244 sought comment on three options for how the regulatory agencies could fit within the proposed new arrangements of the ESI. Taking into account stakeholder feedback, the Draft Plan suggests that Option 2 (implement the plan to ensure that existing multiple jurisdictional regulators operate under new, uniform legislation, in a highly harmonised way), appears to be the most practicable.

Horizon Power agrees that this option is preferable as a means to initially achieve a harmonised national regulatory regime. Within the time available, this is a realistic way forward. However, Option 3, a single national regulator, should be the ultimate goal to enable consistent and appropriate administration of the law, and to reduce costs incurred through governmental duplication of functions.