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Ms Elizabeth Walters
Assistant Director Electricity
Economic Regulation Authority
Via email: publicsubmissions@erawa.com.au

Dear Ms Walters

Submission on Horizon Power's Pilbara network ringfencing rules

Thank you for the opportunity to comment on Horizon Power's (**Horizon**) revised Pilbara Network Ringfencing Rules (**Ringfencing Rules**). BHP supports amendment of the Ringfencing Rules to address the findings of the annual audit (**Audit**).

BHP's review of the Audit findings indicates the following areas ought to be addressed in relation to any review of the of the Ringfencing Rules:

- Inappropriate sharing of information and favourable treatment/service between different parts of the vertically integrated Horizon business.
- Lack of reporting of ringfencing breaches.
- Appropriate documentation (including the Cost Allocation Method) is not in place and/or being updated as necessary.
- Teams undertaking work that should be undertaken by another team.

The amendments to the Ringfencing Rules only address some of the above Audit findings. In particular, it is unclear how the following matters which are relevant to the above areas will be adequately addressed by the proposed amendments:

- **Ringfencing training** – While all staff have undertaken the training, it only occurs every three years. This is inconsistent with the requirement in the APA ringfencing rules for training to occur annually. It is also out of step with industry practice.

Adding 'at least' to the requirement for Horizon staff to undertake Ringfencing training every three years does not change the requirement, as there was nothing preventing more frequent training in the original wording, and there is nothing requiring more frequent training in the revised wording.

BHP recommends that Ringfencing training is undertaken annually. This frequency is both reasonable and appropriate given both the specific nature of the required training and the importance of ensuring that relevant staff understand the nature of the obligations to ensure compliance by Horizon with the Ringfencing Rules. There should also be a requirement for *any* changes to the Ringfencing Rules to be communicated to staff.

- **Application of the Ringfencing breaches** – The removal of the requirement for the Senior Manager, Pilbara Network, to be responsible for compliance with the Ringfencing Rules (section 5) leaves it unclear which position within Horizon would now have that responsibility. At a minimum, the Ringfencing Rules should clearly state which position is responsible for reviewing and monitoring compliance by staff with the Ringfencing Rules.

The Ringfencing Rules should also require the compliance procedure to outline the disciplinary processes and consequences if the Ringfencing Rules are not adhered to. Whilst ideally their

application would occur via positive measures and being embedded in the organisational culture, there should also be clear processes and consequences for non-compliance.

- **Competition protection measures** – The competition protection measures (section 9) should apply more broadly across the business. The Ringfencing Rules should require the network business to procure compliance with the Ringfencing Rules by other Horizon business, in accordance with clause 134(2) of the *Pilbara Networks Access Code*. This includes that other Horizon businesses are to engage and negotiate with the network business in the same way they would engage with a non-Horizon network business and would ensure bilateral non-discriminatory treatment by all relevant Horizon business in their engagements, consistent with the objectives of Chapter 8 of the Code.
- **Organisational structure** – The organisational structure should be published (and kept current) and clearly identify the roles and responsibilities of each division so external parties can engage with the appropriate area and not inadvertently share information with a Horizon business in ways that would lead to contravening, or increase the risk of contravening, the Ringfencing Rules.

The definition of 'Officer' may also need review to ensure it is not too broad (especially noting limbs b and c) and does not capture staff in parts of the organisation that should be subject to Ringfencing Rules. In addition, clause 9.2.1 does not require the organisational structure to consider separating staff involved in provision or marketing of Covered Services and provision or marketing of services provided by other Horizon businesses if that staff member is an 'Officer'. This appears to be a circular requirement (the structure of the organisation is one factor which determined whether a staff member is an Officer) and may not provide appropriate ringfencing outcomes.

Further, the following paragraph appears to contradict the remainder of section 9.2.1.

However, Horizon Power will not separate the small number of functions that are shared between the provision or marketing of covered services in the Pilbara region and the provision or marketing of services by an [sic] Horizon Power Other Business.

There are some findings that will be difficult to address via amendment to the Ringfencing Rules. For example, the Ringfencing Rules already require the Cost Allocation Method to be updated annually, however as demonstrated by the Audit this has not been occurring. A further example is teams undertaking work that is not within their remit or consistent with the Ringfencing Rules.

The Audit also found that 'despite the presence of a Service Agreement between the HPCC and the contestable part of Horizon Power, there appears to be an expectation by those in the contestable part of the business that the HPCC will dispatch Horizon Power's generators to maximise returns rather than comply with the procedures' (page 29).

It is important that Horizon undertakes action to address such findings to ensure ongoing compliance in addition to the proposed amendments to the Ringfencing Rules.

Thank you for consideration of BHP's submission. We are available to meet to discuss the above if that is helpful.

Yours sincerely

