



Economic Regulation Authority

WESTERN AUSTRALIA

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Our Ref: D/2009/06032

26 May 2009

Mr Wayne Isaacs  
President Nickel West  
BHP Billiton Nickel West Pty Limited  
Level 17, Central Park  
152-158 St Georges' Terrace  
PERTH WA 6000

Dear Mr Isaacs

**SECTION 32 – ELECTRICITY INDUSTRY ACT 2004 NOTICE OF FAILURE TO COMPLY WITH LICENCE**

Reference is made to the letter to Mr William Head, Senior Engineer – Energy Supply dated 16 April 2009, and the following document submitted to the Economic Regulation Authority (Authority) on 8 February 2009:

Report titled Performance Audit and Asset Management System Review – BHP Billiton Nickel West Pty Ltd by Sinclair Knight Merz (the Audit Report).

Based on its assessment of the Audit Report, the Authority has formed the opinion that BHP Billiton Nickel West Pty Ltd (NiW) has contravened Electricity Distribution Licence 2 and Electricity Retail Licence 2.

In accordance with section 32(1) of the *Electricity Industry Act 2004*, the Authority hereby serves the attached Notice on BHP Billiton Nickel West Pty Ltd (NiW). The Notice requires NiW to rectify the contraventions set out in the Notice (the Contraventions) by no later than 30 March 2010.

In the Authority's opinion, implementing the "corrective actions" identified in the Audit Report would rectify the Contraventions. NiW may, of course, choose alternative ways of rectifying the Contraventions. If NiW does choose alternative methods of rectifying the Contraventions, then the Authority is to be notified.

Yours sincerely

LYNDON ROWE  
**CHAIRMAN**

cc. Minister for Energy

Section 32

Electricity Industry Act 2004

**NOTICE**

TO: BHP Billiton Nickel West Pty Ltd  
Level 17, Central Park  
152-158 St Georges' Terrace  
PERTH WA 6000

**TAKE NOTICE** that pursuant to section 32(1) of the *Electricity Industry Act 2004* ("the Act"), by no later than 30 March 2010 you are hereby required to rectify the contraventions of Electricity Distribution Licence 2 and Electricity Retail Licence 2 set out in the Schedule attached to this Notice and marked with the letter "A".

You are hereby notified that if you do not comply with this Notice, then in accordance with section 32(2) of the Act the Economic Regulation Authority ("the Authority") may take one or more of the following actions:

- a. serve the BHP Billiton Nickel West Pty Ltd with a letter of reprimand;
- b. subject to section 33 of the Act, order BHP Billiton Nickel West Pty Ltd to pay a monetary penalty fixed by the Authority but not exceeding \$100,000; and/or
- c. subject to section 33 of the Act, cause any or all of the contraventions to be rectified to the satisfaction of the Authority at the expense of BHP Billiton Nickel West Pty Ltd.

The Common Seal of the Authority was hereto duly affixed by the Chairman of the Authority on 19 May 2009:

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In the presence of:

Member: \_\_\_\_\_

Member: \_\_\_\_\_

Attachment: Schedule of Contraventions

"A"

## Schedule of Contraventions

### 1. Contravention of clause 5 of Electricity Distribution Licence 2

Clause 5.1 of Electricity Distribution Licence 2 ("Distribution Licence") states:

"Subject to any modifications or exemptions granted pursuant to the *Act*, the *licensee* must comply with any *applicable legislation* including, but not limited to, the *Electricity Industry Customer Transfer Code 2004*, the *Electricity Industry Metering Code 2005*, the *Reliability and Quality of Supply Code 2005* and the *Code of Conduct for the Supply of Electricity to Small Use Customers 2004*."

BHP Billiton Nickel West Pty Ltd ("NiW") has contravened clause 5.1 of the Distribution Licence as follows:

- 1.1 Clause 3.5(3) of the *Electricity Industry Metering Code 2005* (**Metering Code**) requires a network operator, for each metering installation on its network, on and from the time of its connection to the network, to provide, install, operate and maintain the metering installation in the manner prescribed (unless otherwise agreed) in the Metering Code. The audit report discloses that meters were not checked or calibrated during the audit period (page 16).
- 1.2 Clause 3.1 of the Metering Code requires a network operator to ensure that its meters meet the requirements specified in the applicable metrology procedure and also comply with any applicable specifications or guidelines (including any transitional arrangements) specified by the National Measurement Institute under the *National Measurement Act*. The audit report discloses that the meters were last calibrated in the period between 2000 and 2003, CT/VT details were not available and the overall accuracy is unknown (page 16).
- 1.3 Clause 3.8 of the Metering Code requires a network operator, for each metering installation on its network, to ensure that the metering installation is secured by means of devices or methods which, to the standard of good electricity industry practice, hinder unauthorized access and enable unauthorised access to be detected. The audit report discloses that metering installations that are installed on customer's premises have no locks and no meters were sealed (page 16).
- 1.4 Clause 3.9(3) of the Metering Code requires each metering installation to meet at least the requirements for that type of metering installation specified in Table 3 in Appendix 1 of the Metering Code. Clause 3.12(1) of the Metering Code requires a network operator to ensure that each metering installation complies with, at least, the prescribed design requirements. Clause 3.12(2) of the Metering Code requires a network operator to ensure that instrument transformers in its metering installations comply with the relevant requirements of any applicable specifications or guidelines (including any transitional arrangements) specified by the National Measurement Institute under the *National Measurement Act* and any requirements specified in the applicable metrology procedure. The audit report discloses a lack of information and detail concerning the standards of the current metering installations (page 17) and the auditor is uncertain that the installations meet

the requirements of the Code. Given the audit methodology and the lack of information, the Authority is of the opinion that NiW has not complied with these requirements of the Metering Code.

- 1.5 Clause 3.12(4) of the Metering Code requires a network operator to maintain drawings and supporting information, to the standard of good electricity industry practice, detailing the metering installation for maintenance and auditing purposes. The audit report discloses that drawings and other information were not maintained (page 17).
- 1.6 Clause 3.14(3) of the Metering Code requires that if, under clause 3.14(2) of the Metering Code, a metering installation uses metering class CTs and VTs that do not comply with the prescribed requirements, then the network operator must either (or both) install meters of a higher class accuracy or apply accuracy calibration factors within the meter in order to achieve the overall accuracy requirements prescribed. The audit report discloses that no details of wiring configuration or CT/VT were available (page 18). Given the audit methodology and the lack of information, the Authority is of the opinion that NiW has not complied with these requirements of the Metering Code.
- 1.7 Clause 4.2(1) of the Metering Code requires a network operator to ensure that its registry complies with the Code and the prescribed clause of the market rules. Clause 4.3(1) of the metering Code requires the standing data for a metering point must comprise at least the items specified. The audit report discloses that the standing data does not contain all of the information specified (page 18).
- 1.8 Clause 5.20(1) of the Metering Code requires a network operator, within 6 months from the date that the Metering Code applies to the network operator, to develop, in accordance with the communication rules, an energy data verification request form. No such form has been developed (page 19).
- 1.9 Clause 5.21(9) of the Metering Code states that any written service level agreement in respect of the testing of the metering installations, or the auditing of information from the meters associated with the metering installations, must include a provision that no charge is to be imposed if the test or audit reveals a non-compliance with this Code which results in energy data errors in the network operator's favour. The audit report discloses that the metrology clauses in the Power Purchase Agreements entered into by NiW include information about the requirements to check the meters, but do not indicate whether this will be a chargeable item (page 19).
- 1.10 Clause 6.1(1) of the Metering Code requires a network operator to, in relation to its network, comply with the agreements, rules, procedures, criteria and processes prescribed. The audit report discloses that, with the exception of metering, there are no excursions from the terms of the Power Purchase Agreements entered into by NiW (page 19).
- 1.11 Clause 7.2(2) requires a network operator to notify each Code participant of its initial contact details and of any change to its contact details at least 3 business days before the change takes effect. The audit report indicates no formal communication took place (page 20).

- 1.12 Clause 5(1) of the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005* (Reliability Code) requires a distributor or transmitter to, as far as reasonably practicable, ensure that electricity supply to a customer's electrical installations complies with prescribed standards. The audit report discloses that there is no permanent monitoring of power quality and there is no formalised logging of power quality complaints (page 20). Given the lack of information, the Authority is of the opinion that NiW has not complied with these requirements of the Metering Code.
- 1.13 Clause 23(1) of the Reliability Code requires a distributor or transmitter to take all such steps as are reasonably necessary to monitor the operation of its network to ensure compliance with specified requirements. The audit report discloses a number of deficiencies with outage recording (page 20). The Authority is of the opinion that NiW has not complied with these requirements of the Reliability Code.
- 1.14 Clause 23(2) of the Reliability Code requires a distributor to keep records of information regarding its compliance with specific requirements for the period specified. The audit report discloses that all required information was not kept (page 21).

## **2. Contravention of clause 19 of Distribution Licence**

Clause 19.1 of the Distribution Licence states:

"The *licensee* must provide for, and notify the *Authority* of, an *asset management system* in relation to the *distribution system* within 2 *business days* from the *commencement date* or from the completion of construction of the *distribution system*, whichever is later."

The asset management system is defined in the Distribution Licence as "the measures that are to be taken by the *licensee* for the proper maintenance, expansion or reduction of the *distribution system*".

The audit report discloses that no formal asset management system exists and no details of the asset management system have been provided to the Authority (page 15). Further, although NiW appears to have an informal asset management system, the audit report discloses a number of deficiencies with NiW's asset management system for its distribution system. Some of the deficiencies disclosed in the audit report are such that the Authority does not consider that NiW's asset management system puts in place measures for the proper maintenance of the distribution system.

In particular, to comply with clause 19.1 of the Distribution Licence, the following measures are required to be implemented:

- 2.1 NiW must formalise and implement an Asset Management Plan ("AMP") and must formally approve the AMP.
- 2.2 The following issues must be adequately addressed in the AMP:
  - 2.2.1 a list of available and required critical spares to avoid disposing of critical or retaining unnecessary plant;
  - 2.2.2 high level disposal plans for electrical plant should be included in the AMP;

- 2.2.3 operational plans must be linked to service levels and reviewed regularly;
- 2.2.4 asset registers must be formalised and a complete set of plans created;
- 2.2.5 maintenance plans must be fully documented for plant and regularly reviewed;
- 2.2.6 the development of an IT system that would provide a roadmap to all relevant data and capture compliance issues including a mechanism to ensure regular reviews of the system;
- 2.2.7 a risk register and the process to review it regularly;
- 2.2.8 the use of risk analysis and its link to service levels;
- 2.2.9 contingency planning and documentation of that planning;
- 2.2.10 financial planning and documentation of that planning; and
- 2.2.11 a mechanism to ensure there are regular reviews of the AMS.

### **3. Contravention of clause 5 of Electricity Retail Licence 2**

Clause 5.1 of Electricity Retail Licence 2 ("Retail Licence") states:

"Subject to any modifications or exemptions granted pursuant to the *Act*, the *licensee* must comply with any *applicable legislation* including, but not limited to, the *Electricity Industry Customer Transfer Code 2004*, the *Electricity Industry Metering Code 2005*, the *Reliability and Quality of Supply Code 2005* and the *Code of Conduct for the Supply of Electricity to Small Use Customers 2004*."

NiW has contravened clause 5.1 of the Retail Licence as follows:

- 3.1 Clause 5.19(2) of the Metering Code requires that a user, to the extent that it is able, to collect and maintain a record of the address, site and customer attributes, prescribed in relation to the site of each connection point, with which the user is associated. The audit report discloses that points of contact were out of date (page 19).