



Our ref : A48658262
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Ms Naomi Menon
Director, Competition Exemptions
Australian Competition and Consumer Commission

via exemptions@accc.gov.au

Dear Ms Menon

AA1000623 – PILBARA ENERGY NETWORKS – SUBMISSION

Thank you for your letter dated 16 November 2022 inviting submissions from interested parties on the above application. Energy Policy WA would like to formally submit its full support for the authorisation request.

Pilbara regime created to deliver public benefit

The Pilbara ISOCO's application provides an accurate and comprehensive outline of the Pilbara regulatory framework created by the Western Australian Government (refer paragraphs 22-44 of the application).

The implementation of the Pilbara regulatory regime was a significant policy achievement, reflective of a highly consultative, four-year reform process and included the establishment of a light-handed third party access regime for covered electricity networks and creation of an independent system operator. These reforms were given effect through new Part 8A of the *Electricity Industry Act 2004* (EIA) and aim to deliver public benefit through the achievement of the Pilbara electricity objective, as outlined in section 119(2) of the EIA:

“(2) The objective of this Part (the Pilbara electricity objective) is to promote efficient investment in, and efficient operation and use of, services of Pilbara networks for the long-term interests of consumers of electricity in the Pilbara region in relation to —

- (a) price, quality, safety, reliability and security of supply of electricity; and*
- (b) the reliability, safety and security of any interconnected Pilbara system.”*

The immediate public benefits associated with the reforms include enhanced generation, storage and retail competition through third party access to covered networks in the Pilbara region (Horizon Power's coastal network and Alinta Energy's Port Hedland network). Energy Policy WA believes that the public benefits that derive from the Pilbara regime will continue to increase over time.

The application highlights the economic significance of the Pilbara region to the nation's economy, and explains the unique geographic and economic factors which have influenced the development of large, disparate transmission networks, placing a premium on secure and reliable supply for economically significant resource projects (refer paragraphs 298-299).

As the scope and scale of decarbonisation challenges and opportunities in the region continue to emerge, Energy Policy WA considers that the Pilbara regime will provide a foundational framework to enable an energy transition, which will likely require increased interconnection between transmission networks and common-use infrastructure. Given the economic significance of the region and the potential decarbonisation opportunities (refer paragraph 306), the expected public benefits from the Pilbara regime are economically significant.

Pilbara regime contains appropriate safeguards to address anti-competitive behaviour

The role of the Independent System Operator is integral to the Pilbara regime. Further, the decision to appoint a participant-owned company to this role was carefully considered by the Western Australian Government to balance achievement of the legislated Pilbara electricity objective (required to deliver public benefits), with a requirement to ensure the solution was fit-for-purpose and responsive to the unique needs of the Pilbara electricity system. These considerations are comprehensively detailed in the application (refer paragraphs 48-51 and paragraph 310).

A distinct advantage of this approach is to have a local Independent System Operator whose sole focus is the Pilbara. This model also substantially reduces regulatory administration costs, thereby lowering a potential barrier to entry.

The application accurately establishes the unique context of the Pilbara region and its participants, and outlines the range of controls implemented to mitigate and safeguard against the risk of any competition concerns (refer paragraphs 45-61). Energy Policy WA endorses these views.

It is pertinent to note that the Network Service Providers in the region (outside of Horizon Power and Alinta Energy) comprise of large resource companies whose core business activities are not electricity related and who are subject to competitive international markets. Throughout the reform process, it was apparent these companies were particularly aware of and sensitive to the perception of anti-competitive activities, and the potential ramifications on their respective reputations or exposure of their businesses to anti-trust allegations in Australia or internationally, especially where prospective penalties may be calculated on revenue or turnover metrics.

In and of itself, this provides Energy Policy WA with reassurance in the integrity of the framework and controls developed to ensure the independence of the Independent System Operator. Further, Energy Policy WA notes that the scope of conduct requested for authorisation is limited to that required or permitted by the Pilbara regime. The application defines the Pilbara regime in paragraph 9, with reference to specific legislative and regulatory instruments created by, and within the control of, the Western Australian Government.

Following on from this point, Energy Policy WA agrees with the counterfactuals outlined in the application (refer paragraphs 309-310). Specifically Energy Policy WA considers that, despite the low residual risk of competition concerns arising, authorisation from the ACCC will be essential if Pilbara ISOCO is to continue its appointment as the Independent System Operator. Simply put, only an authorisation from the ACCC will relieve the risks to Pilbara ISOCO's members and their businesses.

The Western Australian Government's willingness to support the Pilbara ISOCo in this respect is evidenced through implementation of the Electricity Industry (Pilbara Networks) Amendment Regulations 2022 (available on legislation.wa.gov.au), which authorise the Pilbara ISOCo's conduct on an interim basis.

Summary

Energy Policy WA considers the Pilbara regime facilitates the achievement of legislated objectives that are pro-competition and deliver economically significant public benefits to the Pilbara region and the national economy.

The appointment of a participant owned company to the Independent System Operator role was necessary and appropriate in order to establish a fit-for-purpose regulatory regime for this unique and significant region. Energy Policy WA believes that the Pilbara regime creates suitable controls and safeguards to mitigate and manage any anti-competitive perceptions and risks.

Energy Policy WA considers that an ACCC authorisation is vitally important to allow the Pilbara regime to continue to develop and deliver substantial public benefit, both in the short term, through the immediate introduction of third party access, increased competition and improved electricity security and reliable, and over the longer term, through the assistance and realisation of economically significant decarbonisation opportunities.

Accordingly, Energy Policy WA is fully supportive of this application for authorisation.

Thank you for the invitation to provide a submission. Should you have any further queries or require additional information, please contact Kathryn Barrie, Director Strategic Energy Policy, Energy Policy WA on [REDACTED] or via email at [REDACTED].

Yours sincerely

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Jai Thomas
COORDINATOR OF ENERGY

7 December 2022