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Dr Pat Walsh
Commissioner
Utilities Commission
GPO Box 915
Darwin NT 0801

Dear Dr Walsh

Compliance Framework and Reporting Guidelines: Draft for Consultation

Thank you for providing Power and Water Corporation (Power and Water) the opportunity to make a submission to the Utilities Commission (the Commission) consultation on its draft Compliance Framework and Reporting Guidelines (draft guidelines).

Power and Water is committed to complying with each of its regulatory and licence obligations across the entire spectrum of its operations, which it manages through its Board approved Compliance Framework. As you are aware, the Compliance Framework in use by Power and Water accords with the principles of Australian Standard 3806 compliance program (AS 3806), as recently endorsed by the Commission's auditors, Parsons Brinckerhoff.

The draft guidelines however appear to be at odds with the Compliance Framework (the requirement for which is included in the draft guidelines) by imposing the Commission's own interpretation of compliance through its risk ranking, which results in an internal inconsistency within the draft guidelines themselves.

Overall however, the intent of the Commission's draft guidelines is supported and while Power and Water is broadly in agreement with reporting material breaches and submitting an annual compliance report, there are two key aspects that practically and pragmatically prohibit adoption of these obligations which stem from the Commission's approach to risk ranking. Those being:

- the decision by the Commission to rank all compliance obligations of equally high importance and 'material' and therefore all reportable under the new reporting requirements; and

- the requirement under the new Annual Compliance Report, for management and Board to report that it is aware of and complies with all obligations on the business, regardless of whether they are material or non-material.

Power and Water's Compliance Framework adopts a more balanced approach to risk assessment and takes account all of its 10,000 regulatory and non-regulatory obligations, from low to extreme risk across the Corporation, even those which fall outside the remit of the Commission's jurisdiction. This obviously results in different risk assessments and level of risk appetite adopted by the Board through having to take a broader view of its obligations, than is covered by the Commission's responsibilities.

The Commission's approach to risk ranking and compliance in Power and Water's view is overly prescriptive and akin to 'regulatory gold plating'. It assigns inappropriately high risk ratings to almost all of the obligations because the Commission has elected to rate all seven categories of risk of equal importance.

The definition of material breaches at paragraph 2.13 of the draft guidelines is broadly in line with Power and Water's Compliance Framework, but it is the step taken in paragraph 2.14 to also include any breach "...with a 'high' risk rating in the Commission's Register of Compliance", that is of concern and which limits Power and Water's ability to support the proposed draft guidelines.

As a result of these proposed reporting requirements under the draft guidelines, each license holder would be obligated to put in place inefficient, onerous and particularly resource intensive reporting obligations to management and the Board, which will place upward pressure on prices and downward pressure on service standards.

In regards to the Annual Compliance Report, the concern again is the onerous and inefficient obligations passed on to management and the Board by having to list and report against all obligations on the business, regardless of whether they are material or non-material, and for all instances of non-compliance to be separately identified and listed.

Power and Water has over 10,000 legal obligations on it at any one time, and for the Commission to expect any member of the management team or Board member to state categorically that it has full visibility of all these obligations across the entire business' operations in the Territory is unreasonable, impractical and administratively inefficient. Subsequently, these reporting requirements would impose unacceptable levels of risk onto management and the Board.

It is therefore requested that the Commission amend its approach to risk assessment for both the Reporting of Material Breaches and the threshold of what is captured under the Annual Compliance Report declaration, to focus only on material breaches determined as such by in each licensee's Compliance Framework.

This would instil an internal consistency to the Commission's approach to regulatory compliance and appropriately allocate the responsibility of managing the various risks and legal obligations of a license holder, onto the respective Boards of each entity.

Through its auditing functions, the Commission can then determine whether the licensee's Compliance Framework adopts an appropriate approach to risk management and mitigation across the entire spectrum of license obligations imposed by the Commission.

If you wish to discuss this matter further, please contact David Murphy, Senior Manager, Economics and Regulation on (08) 8985 7206 or by email: david.murphy@powerwater.com.au.

Yours sincerely



Djuna Pollard
Acting Chief Executive

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