

23 March 2017

Mr Hugo Harmstorf
Chief Executive Officer
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240

Dear Hugo

RE: ENDEAVOUR ENERGY SUBMISSIONS TO IPART IN RELATION TO DRAFT ELECTRICITY NETWORKS REPORTING MANUAL

Endeavour Energy welcomes the opportunity to provide written comment in respect of IPART's draft updates to its Electricity Networks Reporting Manual dated March 2017 (**Reporting Manual**). Specifically, in relation to proposed updates to Chapter 2 of the Reporting Manual, including various updates in "Section 2.4.3 – Stage 3 Final Report". This letter sets out Endeavour Energy's submissions in this regard.

Endeavour Energy's submissions address two issues in relation to the Reporting Manual:

1. Practical issues for electricity network operators (**ENOs**) in relation to incident reporting under Chapter 2 of the Reporting Manual; and
2. Issues in relation to legal professional privilege.

1. Practical issues

Chapter 2 of the Reporting Manual sets out incident reporting requirements for network energy operators in the event of an incident. These reporting requirements are in addition to requirements to report to SafeWork NSW pursuant to the *Work Health and Safety Act 2011* (NSW).

Endeavour Energy has three comments to make in relation to the practicality of incident reporting requirements in Chapter 2 of the Reporting Manual.

First, there is significant overlap in relation to the information to be provided to IPART and SafeWork NSW in relation to incidents affecting work health and safety. This involves a material duplication of effort on the part of ENOs, who are required to report the same or similar information to each regulator in a different form and at different times. This gives rise to inefficiencies and additional administration costs for ENOs.

It is understood that IPART is working with SafeWork NSW to "facilitate a collaborative regulatory response" (Reporting Manual, p 4). Endeavour Energy considers that it would be desirable to involve ENOs in relevant discussions with IPART and SafeWork NSW for the purposes of developing processes to avoid or minimise duplication in relation to incident reporting.

Second, although it is envisaged that only the more significant events require reports at all three stages (see Reporting Manual, paragraph 2.4), Table A.1 indicates that the reporting requirements may be unnecessarily onerous in relation to some sorts of incidents that qualify for a Stage 3 report (Reporting Manual, pp 36-41).

A Stage 3 report is required in respect of: (a) a major incident; (b) an incident; or (c) a significant near miss (Reporting Manual, Table A.1). Endeavour Energy is concerned that an ENO is required to provide the same substantial amount of information for the purposes of a Stage 3 report for events of varying degrees of practical severity (see Reporting Manual, paragraph 2.4.3).

The lowest level of incident severity for a Stage 3 report may involve events such as: (a) an incident where there was third party property damage above \$100,000 in value (which could, for example, involve partial damage to a single home); or (b) a significant near miss involving the death of a domestic pet or livestock. Yet the same level of reporting will be required in relation to major incidents which result in: (a) the declaration of a state of emergency due to a supply outage; (b) fatalities to persons; or (c) third party property damage affecting many homes and costing many millions of dollars.

Accordingly, Endeavour Energy considers that IPART should differentiate the amount of information and detail required for a Stage 3 Report in respect of major incidents as compared to other relevant types of events.

Third, the reporting framework presupposes that the cause of an incident or major incident will be conclusively determined within the 90-day period allowed for a Stage 3 final report (Reporting Manual, p 36, Table A.1). In some cases, it will be difficult to determine the cause of an incident or major incident within such a period.

By way of illustration, the following are some of the practical difficulties that can arise in cases involving suspected network-related fires:

- i. The real cause of the fire may be difficult to determine based upon the physical and other evidence.
- ii. The real cause of the fire may be difficult to determine without recourse to expert and/or technical analysis.
- iii. In some cases, a detailed investigation may lead to the conclusion that the fire should be classified as "undetermined" in accordance with accepted scientific fire investigation methods.
- iv. Proper identification of the cause may depend upon factors outside the control of an ENO, including whether investigating authorities have: adequately documented the fire scene; collected all relevant evidence (including witness evidence); and excluded other potential causes in accordance with accepted scientific fire investigation methods.
- v. Where the relevant events are subject to investigation by the NSW Coroner, the ENO may not have access to evidence retained by fire investigators without the permission of the Coroner.
- vi. Internal investigations being undertaken by an ENO may be affected by a coronial inquiry or by other legal proceedings.
- vii. In particular, internal investigations may be subject to discovery processes in the context of civil litigation.
- viii. In turn, interim or tentative conclusions reached by internal investigations have the potential to prejudice the legal position of an ENO in civil litigation, especially if such conclusions are communicated as fact to a third party (such as a regulator).

At present, paragraph 2.4.3 states that "[w]here the facts around an incident are unclear or unknown, a statement to that effect should be provided". In addition, Table A.1 (p 41, footnote g) states that an ENO may apply for an extension where a network operator considers that a 90-day reporting date "is not achievable".

Although such allowances are appropriate, Endeavour Energy considers that the Reporting Manual should also make express allowance for exceptional cases where information as to incident causes cannot be reported within the 90-day period for a Stage 3 report, including where the incident is subject to legal proceedings. In such cases, it would be appropriate for an ENO to write to IPART stating reasons as to why the 90-day period cannot be met and providing an estimate as to when the Stage 3 report is expected to be completed.

2. Legal professional privilege

It is well established as a matter of law that statutory provisions are not to be construed as abrogating important common law rights, privileges and immunities in the absence of clear words or necessary implication.

Endeavour Energy considers that, in most cases, incident reporting will not raise issues of legal professional privilege. However, Endeavour Energy considers that the Reporting Manual, and in particular paragraph 2.4.3, should acknowledge the entitlement of ENOs to assert legal professional privilege on a case-by-case basis where appropriate.

Endeavour Energy would like to confirm that this submission does not contain confidential or commercially sensitive information.

Endeavour Energy is committed to safety, reliability and meeting its regulatory obligations. In this regard, Endeavour Energy welcomes any further involvement required to finalise the Reporting Manual.

If you have any queries or wish to discuss this matter further please contact Mr Jon Hocking, Manager Network Regulation on [REDACTED] or alternatively via email at [REDACTED].

Yours sincerely

[REDACTED]