

**EXECUTIVE SUMMARY AND RECOMMENDATIONS FOR THE  
REPORT OF THE STANDING COMMITTEE ON PUBLIC ADMINISTRATION**

**UNASSISTED FAILURE**

---

**EXECUTIVE SUMMARY**

*Background*

- 1 In September 2009, this Committee resolved to examine the findings of a 2008 Distribution Wood Pole Audit Review of Western Power published by the Department of Commerce's EnergySafety Directorate (**EnergySafety**). There was an obvious public interest in considering if this review had implications for both Western Power and Horizon Power.
- 2 Given the potential consequences of any wooden power pole failure, wooden power pole safety is, quite literally, a matter of life and death. The condition of the State's wooden power pole network asset base is of concern to every Western Australian. The three recommendations made in this Report, and listed below, are made with the dual purpose of ensuring public safety, and restoring public confidence in the management of the State's major publicly owned electricity utility [paragraphs 7.72, 9.14 and 9.19].
- 3 This Committee is not a regulator of Western Power or Horizon Power. It serves the Legislative Council, on behalf of the people of Western Australia. The purpose of this inquiry was to examine what Western Power and Horizon Power, and their regulators have been doing about the condition of the wooden power pole asset base since EnergySafety's *Western Power's Wood Pole Management Systems: Regulatory Compliance Assessment Report*, published in November 2006 (the **2006 Audit**), and thereafter, report its findings to the Legislative Council.

*Changed Focus*

- 4 Almost as soon as this inquiry commenced, this Committee became aware of significant problems with the compliance culture and asset management systems of Western Power in particular. Less than three weeks after the Committee commenced this inquiry, Western Power was issued with a regulatory notice by EnergySafety. Indeed, as 2009 drew to a close, the Committee was disturbed to note that Western Power had become subject to regulatory enforcement instruments from both of its principal regulators, namely: the Economic Regulation Authority (**ERA**) [part 4], and EnergySafety [part 6]. In addition, both regulators had published deeply troubling

reports suggesting serious systemic, cultural and operational dysfunction within Western Power [parts 3, 5 and 7]. It was also of concern to this Committee that both regulators had made adverse findings about Western Power's wooden power pole asset management systems, practices and processes.

- 5 Given the limited resources of the Committee, the size of the network wooden power pole asset base, and the deeply troubling nature of the regulatory assessments of Western Power in 2009 in particular, the Committee determined, at an early stage, to focus its attention on Western Power, unless and until useful points of comparison with Horizon Power's conduct became apparent.

#### *Inquiry Strategy*

- 6 This Committee determined that, as much as possible, it would assess Western Power's performance on the basis of its reported wooden power pole asset management systems, practices and processes. Over the two years of this inquiry, the Committee carefully gathered information about industry practice throughout Australia. The Committee held private hearings with many of Western Power's key stakeholders. The Committee also gathered all of the relevant publicly available information about Western Power's performance. In addition, the Committee obtained a significant sample of Western Power's wooden power pole asset database, and spent some time analysing its structure and content. The majority of the evidence presented in this Report is taken from publicly available sources.
- 7 On the basis of this careful assessment of the relevant evidence, the Committee held a number of final private hearings with relevant regulatory agencies between September and November 2011. In these hearings, the Committee attempted to reconcile some of the glaring inconsistencies that the Committee discovered, both in Western Power's reported performance, and in the regulation of Western Power - almost all of which was readily accessible on the public record.

#### *Contradictory Signals from Regulatory Agencies*

- 8 During this inquiry, Western Power continued to attract adverse commentary from its principal regulators about its wooden power pole asset management systems, practices and processes [parts 7 and 8]. Despite this growing catalogue of regulatory compliance notices and adverse comment, Western Power's asset management systems continued to receive positive audits from its own consultant reviewers. In addition, the Auditor General consistently gave Western Power's Annual Reports unqualified Audit Opinions, and did not see fit to conduct a performance audit on Western Power. All the while, Western Power was sending out messages in various reports to the effect that it was "*Managing the Network*"; and developing "*comprehensive wooden power pole replacement plans*" (paragraphs 6.12 and 7.63),

---

that would provide “*The Solution*”, to its aging network “*Challenge*”. Western Power was well advanced on its “*compliance journey*” (paragraph 5.95 below).

*Western Power’s “network ... reaching the end of its useful and safe life”*

- 9 In spite of its repeated assurances over past years that it was “*Managing the Network*”, Western Power announced, on 15 September 2011, that its “*network was reaching the end of its useful and safe life*”, and that 20 years of accelerated investment was necessary (starting with a five-year, \$1.222 billion funding proposal) to replace or reinforce 160,000 wooden power poles. At this point it became apparent that the Committee needed to review Western Power’s performance since 2006 in a public forum, with respect to its wooden power pole asset base. Two public hearings with Western Power were held in November 2011 so that the Committee, could appropriately scrutinize, and hold Western Power to account for its performance over the preceding five years, with respect to its wooden power pole asset management systems, practices and processes. Western Power has since indicated that it had been hoping to have common purpose with the Committee. This demonstrated a fundamental misconception, on Western Power’s part, about the role of a Parliamentary inquiry.

*Western Power and its Regulatory Agencies*

- 10 This Report sets out the evidence that the Committee has collected since September 2009, and, for the most part, is set out in chronological order. It is hoped that, in this way, the reader will understand how Western Power’s wooden power pole asset management systems, practices and processes have, or have not, responded to adverse regulatory findings over time. The Report also highlights how each of the regulatory agencies has, or in some cases, has not, functioned over time with respect to Western Power’s wooden power pole asset management systems, practices and processes.
- 11 Western Power has clearly failed to adequately manage its wooden power pole asset base to an acceptable level. This is most obviously demonstrated by its “*worst-in-class*” status, throughout Australia, when it comes to its unassisted wooden power pole failure rates. That was Western Power’s status in 2006, and it remains Western Power’s status in 2012. Both of Western Power’s principal regulators have told this Committee that Western Power is the single most difficult energy provider to regulate, across the whole spectrum of their regulatory responsibilities.
- 12 The Committee has found that Western Power appears to routinely provide inaccurate or misleading information to its regulators - including the Auditor General. Indeed, this has even been the case in Western Power’s dealings with this Committee. It is often difficult to determine if this conduct is simple carelessness, or deliberate design.

- 13 Despite five years of adverse regulatory findings, and the investment of extraordinary sums of money, Western Power's wooden power pole asset management record is still unacceptable from either a safety, or efficiency perspective.
- 14 This Committee was disturbed to discover, as a result of its inquiries, that no single agency of government had a comprehensive oversight role with respect to the performance of publicly owned energy utilities. Neither did any single agency of government have a comprehensive oversight role with respect to the regulatory framework within which energy utilities operate. The Office of Energy had clearly failed to perform these tasks. For this reason, the Committee strongly suggests that any successor agency to the Office of Energy should be expressly tasked with these twin oversight roles, namely: the regulatory framework; and the performance of publicly owned utilities. In order to ensure that these twin oversight roles can be effectively implemented it is essential that the present regulatory framework should be, where necessary, strengthened and clarified. For this reason, one of the Committee's three recommendations in this Report is that the Government should commission a comprehensive review of the present regulatory framework for publicly owned utilities in this State (paragraph 9.14). Based on its own limited inquiries, the Committee has also provided a number of suggestions for any such review to consider, as part of that process.
- 15 It is obvious to this Committee that the Auditor General should have commenced a performance audit of Western Power's wooden power pole asset management systems, practices and processes as soon as the Economic Regulation Authority (the **ERA**) published its damning findings about Western Power's management processes and operational inefficiencies in 2009. As a result of these inefficiencies, the ERA effectively imposed a financial penalty on Western Power of \$261 million over the life of the second Access Arrangement period. Despite these findings by the ERA, the Committee notes that Western Power's executive management group had collectively been awarded over \$2 million in performance bonuses, for the period that had been so critically assessed by the ERA, under their performance agreements with Western Power's Board.
- 16 By the time of the ERA's adverse findings in 2009, *EnergySafety* had already documented glaring deficiencies in Western Power's wooden power pole asset management systems, practices and processes between 2006 and 2009. In addition, by the end of 2009, both the ERA and *EnergySafety* had served Western Power with compliance-deficiency enforcement instruments in 2009 which both dealt with wooden power pole issues. Against this background, the question must be asked as to why no performance audit was conducted as a matter of course. It is of concern to this Committee that it was only after the Committee raised the issue in person with the Auditor General in September 2011, that a performance audit was commenced.

- 
- 17 The Auditor General's unqualified audit opinions for Western Power since 2006, despite Western Power's demonstrated management system, practice and process failures are of significant concern to this Committee. The Auditor General's position as an independent Parliamentary Officer places unique obligations on the office, to ensure that the Parliament has the best possible information on which to make decisions that affect the people of Western Australia. It is clear to this Committee that the Parliament has not been getting the best possible information with respect to Western Power's financial and management systems, practices and processes. For example, the Committee has specifically recommended in this Report that Western Power should publish a formal addendum to its 2010/2011 Annual Report (paragraph 7.72). This addendum is necessary to correct deficiencies in Western Power's 2010/2011 Annual Report with respect to Western Power's *Proposed Revisions to the Access Arrangement and Access Arrangement Information, 2012-2017*, September 2011 (**AA3 submission**) lodged with the ERA. These deficiencies represent a significant failure by Western Power to comply with the requirements of the *Electricity Corporations Act 2005*.

*Paradigm Shift Required*

- 18 As a matter of principle, this Committee accepts the widely held commercial and corporate premise that past performance is a sound indicator of future potential. On any reasonable assessment, Western Power's past performance has been unacceptable. Unless Western Power experiences a radical paradigm shift, its future appears bleak. Alarming, this puts the safety and wellbeing of all Western Australians at risk, in addition to posing an unnecessary limitation on future economic development.
- 19 Many of Western Power's senior management group held equivalent positions in the corporation's predecessor agency. After more than five years of operations under the present structure, it is clear to this Committee that Western Power's current leadership group is either unwilling, or unable, to make the paradigm shift that is needed to fix Western Power's structural and cultural problems.
- 20 This Committee commenced this inquiry by looking at Western Power's wooden power pole issues. However, as the inquiry has developed, it has become clear that the wooden power pole asset management problem is actually symptomatic of much larger problems within Western Power. As this Report demonstrates, there is now an urgent need for the Government to commission a wide-ranging, independent inquiry into Western Power's management and operations over the past five years since disaggregation. That is why one of the Committee's three recommendations in this Report is that such an inquiry should be immediately commissioned (paragraph 9.19).
- 21 Important lessons must be learned from those mistakes that have been made over the past five years, and which are still being made, under Western Power's current structure. This is essential if Western Power is to be transformed into a truly world-

class electricity utility, rather than simply engage in a superficial make-over. Many of Western Power's staff and contractors are already world-class professionals. It is time for the corporation and its leadership group to live up to the potential that is being demonstrated by these staff and contractors every day of the year. The Committee believes that the findings in this Report provide ample justification for such an inquiry, and demonstrate why meaningful structural reform of Western Power is urgently needed, starting at senior management level.

### *Parliamentary Accountability*

22 The conduct of Western Power during this inquiry with respect to this Committee has raised important questions about the extent to which senior public sector executives understand, or fail to understand, the nature of Parliamentary accountability. This is particularly concerning with respect to Government Trading Entities such as Western Power. During the course of this inquiry, it was repeatedly put to this Committee by Western Power, that the Corporation and its management are not directly accountable to the Parliament, by virtue of the provisions of the *Electricity Corporations Act 2005*. This Committee rejects Western Power's suggestion in this matter out of hand.

23 Not only is such a proposition incompatible with the ancient privileges of the Parliament as these have been consistently interpreted by both Houses in this State, it has been expressly, and repeatedly, rejected by the courts. As recently as 2010, the Federal Court stated clearly that statutory authorities that are not agents of the Crown are, nevertheless "*emanations of the State*".<sup>1</sup> In addition, the High Court has held, in a Commonwealth context, that:<sup>2</sup>

*... the conduct of the executive branch is not confined to Ministers and the public service. It includes the affairs of statutory authorities and public utilities which are obliged to report to the legislature or to a Minister who is responsible to the legislature. In British Steel v Granada Television, Lord Wilberforce said that it was by these reports that effect was given to "[t]he legitimate interest of the public" in knowing about the affairs of such bodies.*

24 The Committee notes that the High Court has expressly referred, with approval, to the above statement of law, in the context of a State Legislative Council.<sup>3</sup>

25 Western Power's conduct with respect to this Committee during the term of this inquiry has been deeply troubling. However, as this matter is of significance to the

---

<sup>1</sup> *Sportsbet Pty Ltd v New South Wales* [2010] FCA 604 (16 June 2010), at para 11.

<sup>2</sup> *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, at 561, per Brennan CJ, Dawson, Toohey, Gaudron, McHugh, Gummow and Kirby JJ.

<sup>3</sup> *Egan v Willis* (1998) 195 CLR 424, at 451, per Gaudron, Gummow and Hayne JJ.

---

Legislative Council directly, the Committee will address its concerns about Western Power's conduct with respect to the Committee separately, in a later report.

## RECOMMENDATIONS

26 Recommendations are grouped as they appear in the text at the page number indicated:

Page 146

**Recommendation 1: The Committee recommends that, as a matter of urgency, the Minister for Energy require Western Power to issue a formal addendum to Western Power's 2010/2011 Annual Report. This addendum should be sufficient to correct the existing Director's Report such that Western Power fully complies with the disclosure requirements of the *Electricity Corporations Act 2005*, Schedule 4, clause 11, as these apply to *Western Power's Proposed Revisions to the Access Arrangement and Access Arrangement Information. 2012-2017*, lodged with the Economic Regulation Authority, a submission that was approved by the Board of Western Power on the same date that the Board approved the 2010/2011 Annual Report.**

Page 225

**Recommendation 2: The Committee recommends that the Government commission a comprehensive review of the current regulatory framework applicable to electricity network operators in Western Australia. Any such review should consider, but not be in any way restricted to, each of the issues listed at Appendix 4 to this Report.**

Page 226

**Recommendation 3: The Committee recommends that, as a matter of urgency, the Government commission a wide-ranging independent inquiry into the structure, culture and operations of Western Power since its disaggregation.**

## Extract of Appendix 4 (As per Recommendation 2 above)

### *Recommendations for Legislative/Regulatory Reform*

1. Where energy utilities are required to undergo regulatory and licence-related audits, such audits should be conducted by reviewers that are selected and engaged by the ERA, at the expense of the relevant utility. In the conduct of such audits, there should be absolute clarity that the ERA is the principal for the life of the engagement. This is consistent with current practice relating to the Auditor General.
2. It should be expressly required as a component of any energy licence, that the licensee must comply with their statutory energy safety obligations. The relevant audit reviewers should be required to seek information about this aspect from the energy safety regulator

- as part of any such review. EnergySafety should be expressly authorised to make full disclosure to the auditor in such cases.
3. Public utilities should be required to appoint a statutory officer holding the title of “Chief Engineer”. This person should have the necessary technical qualifications and experience to occupy such a position. The Chief Engineer should report directly to the Board and/or Minister. A Chief Engineer’s Report on the “State of the Infrastructure” of the utility should be required in each year’s Annual Report. In this “State of the Infrastructure Report”, the Chief Engineer should be required to report specifically on the operational safety performance of the infrastructure over the financial year in question, and be required to certify the infrastructure’s capacity for operational safety (with or without qualification) over the prospective financial year.
  4. Other than the Chief Engineer, executive appointments should be made on the basis of managerial and/or administrative skills, qualifications and ability.
  5. There should be a statutory requirement that Executive Directors of any utility be a “*fit and proper person*” as is currently the case in the corporate sphere generally.
  6. The ERA and EnergySafety should have the power to bring an action to have an Executive Director of a utility declared to be a not “*fit and proper person*”. An application for such a declaration should be to either the State Administrative Tribunal or the District Court at the first instance.
  7. The *Electricity Corporations Act 2005* should be amended so that a general prohibition on making false and misleading statements, similar to s1308 of the *Corporations Act 2001* (Cth) applies to corporations established under that Act. The current provisions are not sufficiently broad in their application
  8. Section 18C of the *Energy Coordination Act 1994* should be revised to make the “*order-making*” process more flexible and direct in its application. For example, the existing provision could be amended to allow an Inspector to issue an Order requiring a network operator to inspect a number of components (that is, poles), or replace or repair them (includes reinforce a pole) if these components did not meet the in-service design criteria, or are unsafe.
  9. A provision should be introduced into the *Energy Coordination Act 1994* whereby a clear statement of intent by a network operator that they will not comply with a requirement in an Order may be deemed as equivalent to actual failure to comply with the requirement even if the date for compliance has not been reached;
  10. A provision should be introduced whereby minimum allowable in-service design criteria are required under the *Energy Coordination Act 1994*, by reference to industry standards,



for certain key components in a distribution and transmission system, that is, specification of the minimum safe in-service design parameters before replacement of the component is required. This is currently what happens with respect to accounting standards.

11. A new offence should be introduced into the *Energy Coordination Act 1994* where a component fails and causes injury to a person, or damage to property, as a result of it not being replaced before it reaches its minimum in-service design strength.
12. A system should be introduced into the *Energy Coordination Act 1994* whereby civil penalties can be imposed for failures relating to safety that require proof only on the civil standard of the balance of probabilities (for example, Division 7 of the Model Work Health and Safety Bill).
13. A system should be introduced into the *Energy Coordination Act 1994* whereby regulators have express powers to seek an injunction; for example, if a company or person does not comply with an Order or provision of the relevant legislation.
14. A provision should be introduced into the *Energy Coordination Act 1994* establishing an obligation for Directors and Officers of a network operator to ensure public electrical safety compliance (for example, s27 of the Model Work Health and Safety Bill).
15. Penalties under the *Energy Coordination Act 1994* should be increased to be comparable to similar corporate penalties in other contexts (for example, *Corporations Act 2001* penalties). The current lack of penalty equivalence has undesirable competitive neutrality implications.
16. Network operators should be open and responsible for their public safety performance. Failure to meet acceptable safety and operating standards should be penalised. Simple performance measures, including those listed below, should be reported publicly, on a quarterly and annual basis, with reference to national benchmarks:
  - Unassisted wood pole failures;
  - Damage or electric shocks;
  - Fires where damage occurs to network assets or other property;
  - Unassisted conductor failures;
17. Network operators should report on the basis of transparent definitions of terms (for example, unassisted failures), as approved by the Director of Energy Safety.