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Mr Alan Tregilgas
Utilities Commissioner
Utilities Commission
5th Floor, 38 Cavenagh Street
Darwin NT 0800

Dear Alan

Re: NT Electricity Ring-Fencing Code – Proposed Variations

I refer to your letter dated 6 February 2008 inviting submissions on the Paper prepared by the Utilities Commission detailing the nature of its proposed variations to the NT Electricity Ring-Fencing Code.

Power and Water places a high priority on complying with the Code and working openly with the Commission. Since the Code's introduction in 2001, Power and Water has brought the only two incidents of non-compliance to the Commission's attention and taken prompt corrective action.

We will take any new arrangements equally seriously.

Many of the changes may have merit. However, they have the potential to impose substantial costs on Power and Water. Given the Commission's objective that the public benefit of proposed variations should exceed the cost of compliance, any decision to proceed with the changes must be informed by information on costs. Unfortunately in the time available, Power and Water has been unable to assess rigorously its additional costs. It will undertake this work as a matter of urgency. Power and Water recommends that the Commission delays material decisions until this information is available.

The Paper envisages that the new Code would be implemented by August 2008. Much more time is required to manage the transition properly. For example:

- defining coverage of the proposed Code would, in itself, be a major piece of work, at a time when resources are dedicated to major projects such as the 2009 Networks Regulatory Reset;
- consideration may need to be given to a risk-based approach to ring-fencing and staff awareness training, as opposed to all staff. This would require changes to the existing Information Procedures and a risk assessment and identification of key staff affected. For example, tree-trimming contractors pose less of a risk than consultants engaged on regulatory matters; and
- a number of amendments will be required to the Accounting and Cost Allocation Procedures to reflect the proposed variations and to align with requirements under the Australian International Financial Reporting Standards.

The proposed variations appear to imply that the default contracts, definition of core goods and services, etc would be in place by the commencement date. There is no provision in the proposed variations for transitional arrangements in this respect. Power and Water recommends that meaningful transitional arrangements be provided for in the new Code.

The variations propose that default terms and conditions for commercial contracts be submitted to the Commission for approval. Our understanding is that this type of involvement by a regulator in commercial negotiations is exceptional (outside a regulated monopoly environment). It appears to cut across the intentions of the contestable regime. Current provisions in the *Trade Practices Act* (TPA) provide significant disciplines to ensure that Power and Water does not engage in anti-competitive conduct. Given Power and Water's obligations under the TPA, there is a substantial risk that the Commission's proposed role could expose Power and Water to action by the ACCC. The various Acts governing the Commission's activities would be unlikely to provide protection to the Corporation in these circumstances. If the Commission remains convinced as to the need for this approval process, Power and Water will, of course, seek legal advice and, to the extent it can, share this with the Commission. For the avoidance of doubt, Power and Water understands that the Commission has substantial information gathering powers – it is the proposed approval process that causes significant concern.

Please contact Ms Djuna Pollard, Manager Regulation, Pricing and Economic Analysis, on 8985 8431 if you require further information.

Yours sincerely

Andrew Macrides
Managing Director

March 2008