

**REVIEW OF NT ELECTRICITY  
RING-FENCING CODE  
REVISED DRAFT CODE**

**OCTOBER 2008**



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## Inquiries

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## GLOSSARY

<b>Commission Act</b>	<i>Utilities Commission Act</i>
<b>Code</b>	Northern Territory Electricity Ring-fencing Code
<b>Commission</b>	Utilities Commission
<b>Consultation Paper</b>	<i>Review of NT Electricity Ring-fencing Code: Proposed Variations</i> , Consultation Paper, February 2008
<b>February Draft</b>	Draft Third Version of the Northern Territory Electricity Ring-fencing Code issued for comment in February 2008
<b>Issues Paper</b>	<i>Possible Review of Certain Regulatory Instruments</i> , Issues Paper, August 2007
<b>May Draft</b>	Draft Third Version of the Northern Territory Electricity Ring-fencing Code issued for comment in May 2008
<b>NT Treasury</b>	Northern Territory Treasury
<b>NTMEU</b>	Northern Territory Major Energy Users Group
<b>October Draft</b>	Draft Third Version of the Northern Territory Electricity Ring-fencing Code issued for comment with this Paper in October 2008
<b>Power and Water</b>	Power and Water Corporation
<b>PWC Generation</b>	Power and Water's generation business unit
<b>PWC Networks</b>	Power and Water's networks business unit
<b>PWC Retail</b>	Power and Water's retail business unit
<b>Reform Act</b>	<i>Electricity Reform Act</i>
<b>Response Paper</b>	<i>Possible Review of Certain Regulatory Instruments</i> , Response Paper, January 2008



**CHAPTER****1****INTRODUCTION****Background**

1.1 In February 2008, the Commission published a consultation paper “Review of the NT Electricity Ring-fencing Code: Proposed Variations” (the Consultation Paper) proposing a comprehensive revamping of the Northern Territory Electricity Ring-fencing Code. This possibility was first foreshadowed in the “Possible Review of Certain Regulatory Instruments” Issues Paper published by the Commission in August 2007 and confirmed in the Commission’s Response Paper published in January 2008.

1.2 In the Consultation Paper, the Commission proposed that it revoke the existing Code in its entirety, and promulgate a new version of the Code. A draft Code (hereafter referred to as the “February Draft”), showing how a final Code may look with the proposed variations incorporated, was also provided.

1.3 Following consideration of submissions received in response to the February Draft and its own further deliberations in consultation with its legal advisers, the Commission decided to proceed with the proposed variations to the Code, although with some further amendments to the proposed draft Code.

1.4 In May 2008, the Commission published a further paper “Review of the NT Electricity Ring-fencing Code: Proposed Draft Code”. This paper was the Commission’s formal notice in accordance with clause 7.4 of the Code that it has made a draft decision to proceed with the proposed variation. Again, a draft Code (hereafter referred to as the “May Draft”), showing how a final Code may look, was also provided.

1.5 Following publication of the May Draft, submissions were received from:

- Power and Water Corporation (Power and Water); and
- Northern Territory Treasury (NT Treasury).

**Purpose of this Paper**

1.6 As foreshadowed in August 2008 following receipt of submissions on the May Draft, given that significant matters have been raised, the Commission has decided to release a further draft for comment rather than going straight to a final decision.

1.7 The Commission has not been able to agree with everything that was put to it in the submissions. This Paper recapitulates the rationale that lies behind the draft Code and explains the positions that the Commission has taken on the contentious issues.

1.8 In light of some of these views, the Commission has made some further modifications and refinements to the proposed Draft Code.

## Call for submissions

1.9 Submissions are invited from interested parties concerning the issues raised in this Paper and related matters.

1.10 Submissions, comments or inquiries regarding issues raised in this Paper should be directed in the first instance to:

Executive Officer	Telephone: (08) 8999 5480
Utilities Commission	Fax: (08) 8999 6262
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DARWIN NT 0801	Email: <a href="mailto:utilities.commission@nt.gov.au">utilities.commission@nt.gov.au</a>

1.11 To facilitate publication on the Commission's website, submissions should be made electronically by disk or email. However, if this is not possible, submissions can be made in writing.

1.12 The closing date for submissions is **Friday, 21 November 2008**.

1.13 The Commission will consider any submissions which are received by the closing date, but it is not obliged to consider submissions received after that date.

### ***Confidentiality***

1.14 In the interests of transparency and to promote informed discussion, the Commission intends to make submissions publicly available. However, if a person making a submission does not want their submission to be public, that person should claim confidentiality in respect of the document (or any part of the document). Claims for confidentiality should be clearly noted on the front page of the submission and the relevant sections of the submission should be marked as confidential, so that the remainder of the document can be made publicly available. In addition, a copy of the submission suitable for publication (i.e., with any confidential material removed) should also be provided.

## Timetable

1.15 The present intention of the Commission is to follow a timetable for consultation under the requirements of clause 7 of the Code which would enable a new Code to be introduced with a commencement date of 1 January 2009.

**CHAPTER****2****ISSUES RAISED IN SUBMISSIONS****Main features of the May Draft**

2.1 The February Draft proposed two main sets of changes to the Code.

2.2 First, the Commission proposed to expand the ring-fencing minimum obligations contained in the Code in a number of respects including in relation to the requirement relating to the basis which on a Prescribed Business carried on by Power and Water deals with a Contestable Business carried on by Power and Water (related-party contracts). It was also proposed that goods and services subject to a related-party contract must be provided to third parties who seek the same type of goods or services (third-party contracts) on terms which are fair and reasonable and non-discriminatory.

2.3 Secondly, the Commission proposed to introduce requirements relating to default terms and conditions for certain types of goods or services currently provided under related-party contracts. The purpose of this was to provide transparency as to the terms and conditions on which these goods or services are provided, and to enable third parties to have the option of acquiring the same goods or services from Power and Water on these default terms and conditions.

2.4 The May Draft differed from the February Draft in a number of key respects.

2.5 First, provision was made for the phase in of arm's length (third-party) contracts by Power and Water.

2.6 Secondly, in relation to both related-party and third-party contracts, the Commission's role was redirected to the approval of processes to be followed by Power and Water rather than approval of the resultant contracts themselves, with an increased emphasis instead on the Commission's compliance role.

2.7 Thirdly, in order to allow additional time to take into account the likely direction regarding the NT Government's decisions regarding wholesale generation pricing arrangements, a nine month development period for draft "Default Terms and Conditions Procedures" was allowed, rather than the shorter development period proposed in the February Draft.

2.8 Finally, the Commission proposed an additional clause on 'Decision Making, Public Consultation and Disclosure of Information by the Commission', aimed at providing a comprehensive, but flexible, structure for public consultation by the Commission and the gathering of information which the Commission may require for its decision making. This clause included provision for the release of confidential information if, in the opinion of the Commission, there is a net public benefit.

## Views in submissions on the May Draft

2.9 In its submission, Power and Water expressed concerns in relation to three broad areas:

- the timing of the Commission’s review and proposed changes in the context of the broader Government electricity reform program;
- that the Commission would be acting beyond its powers both in extending the Code to cover the conditions on which Power and Water deals with third parties and in relation to the release of confidential information if, in the opinion of the Commission, there is a net public benefit; and
- that there would be practical difficulties in attempting compliance with some aspects of the proposed Draft Code and that the proposed Draft Code is inconsistent with general regulatory practice.

2.10 In relation to the timing of the Commission’s review, Power and Water noted that:

*“The Northern Territory Government is only in the first stage of its reform process. Early indications are that elements of the national regime can be tailored to the Northern Territory, but there is no detail at this stage as to which elements or how. Government has not yet considered the range of legislative and regulatory instruments that will need amendment, how they might be amended, and how these changes will impact on the overall objectives of reform.*

*Given this, now is not the appropriate time for the Commission to review the Code. A more appropriate time would be to wait until the Government has further progressed its reform program, assessed its objectives and communicated its policy needs to the Commission for implementation.” (pp.8-9)*

2.11 Power and Water also argued it already faces considerable challenges in managing the changes that will result from the Government review, arguing that:

*“Ring-fencing will be a very small part of this, especially given that the Current Code is in effect and establishes high level principles which are almost identical to that operating in the NEM” (p.8)*

2.12 Further:

*“There have been no material instances of non-compliance and there are no retailers that could be disadvantaged by the ordinary operation of the Current Code. There is therefore no urgent need to change.” (p.9)*

2.13 The second key area in which Power and Water expressed concerns relates to the extension of some aspects of the Code to its relationships with third parties, both in relation to contracts for the supply of goods and services to third parties:

*“...the Commission is acting beyond its power in seeking to use the Code to require prescribed businesses to offer to enter into contracts with “third parties” on the basis of default terms and conditions that have been approved by the Commission.” (p.10)*

*“...Power and Water submits that the Code should be limited to dealings only between an Electricity Entity’s Prescribed Businesses and its related or associated businesses. This is consistent with the definition of ‘ring-fencing’ used in the Utilities Commission Regulations.” (p.11)*

and in relation to Power and Water’s contracts with outsourced service providers (i.e., where Power and Water sub-contracts or outsources the performance of any of its business functions):

*“This obligation could potentially operate to require an Electricity Entity to ensure that its Outsourced Service Provider adheres to the Code in respect of all of the Outsourced Service Provider’s other dealings including its dealings with third parties unrelated to the Electricity Entity. This is clearly not the intended operation of this requirement and extends significantly beyond the requirements of any other ring-fencing arrangements in any other jurisdiction in Australia.” (p.11)*

2.14 NT Treasury also expressed some concerns in this area:

*“Treasury acknowledges that, in the absence of effective competition, there may be a case for providing potential or actual competitors with certainty that contracts entered into between PWC and third parties are on efficient and equivalent terms to establish an environment that is conducive to competition.*

*However, the proposed approach would enable the Commission with the broad discretion to intervene in legitimate commercial transactions. This has the potential to generate significant regulatory uncertainty and discourage market entry. This also could expose the Commission to legal risk in the event that the authority is challenged.*

*If the Commission is inclined to regulate third part contracts, Treasury considers that greater prescription for exercising this authority; including clearly defined default terms and conditions a robust dispute resolution mechanism is warranted.” (p.2)*

2.15 Both Power and Water and NT Treasury also considered that the Commission may be moving beyond the scope of its existing powers in relation to the possible release of confidential information.

2.16 Power and Water argued that:

*“Power and Water’s legal advice is that clause 13.6 is an inherently invalid provision of the Proposed Draft Code because of its inconsistency with section 26(2) of the Utilities Commission Act, and that it should be deleted from the Proposed Draft Code. Instead, the capacity of the Commission to deal with confidential information and the rights and obligations of the Commission relating to that information should be left to section 26 of the Utilities Commission Act.*

*...The grounds for disclosure set out in clause 13.6 go well beyond the circumstances that the Act identifies as permitted disclosures of confidential information. Power and Water’s legal advice suggests that these should be deleted.” (pp.12-13)*

2.17 NT Treasury argued that:

*“Enabling the regulator to release confidential information is one mechanism for disseminating market information and promoting competitive conduct. However, the proposed degree of discretion to be afforded in the exercising this authority may also act as a deterrent to market entry as well as potentially exposing the Commission to legal risk.*

*Further, given the commercial and market implications, the treatment of confidential information should be dealt with through legislation rather than industry codes or guidelines.*

*...As such, to the extent that the Commission considers the existing statutory information disclosure provisions are inadequate, a review of the relevant sections of the Utilities Commission Act would appear to represent a more effective approach.” (pp.2-3)*

2.18 Power and Water also expressed concern about the practical workability of the May Draft.

*“Several of the amendments to the Proposed Draft Code are unclear and unworkable from a practical perspective and in some cases flawed or inconsistent with existing work being done by the Commission.*

*...A more simply drafted Code, which focuses on setting out high level ring-fencing principles, could achieve the same purposes with:*

- *Less costs associated with compliance; and*
- *Likely a higher rate of compliance.” (pp.19-20)*

2.19 Finally, Power and Water argued that the May Draft was not consistent with general regulatory practice:

*“It is highly unusual for a Ring-Fencing Code to deal with the range of matters that the Commission currently intends to regulate in the Proposed Draft Code. As noted above, ring-fencing conventionally relates only to issues such as accounting separation, cost allocation, controls over information flows and arrangements between prescribed network businesses and related retail and or generation businesses.*

*While the current Code is very similar to Codes and Guidelines which are in operation interstate, the Proposed Draft Code is without precedent.” (p.16)*

“...Power and Water considers that the Commission is deviating from regulatory practice adopted in other jurisdictions and in doing so imposing unnecessarily complex and onerous requirements on Power and Water and other potential suppliers in seeking to use the Proposed Draft Code to approve the default terms and conditions under which different parts of Power and Water (as an Electricity Entity) provide and receive goods and services to and from one another.” (p.19)

## Commission’s response

### *The timing of this review*

2.20 The Commission acknowledges that, in line with other jurisdictions, it is possible that economic regulation of the electricity industry in the Northern Territory could be passed over to the Commonwealth at some time in the future. It has been suggested to the Commission that it should therefore refrain from making any amendments to the Code and leave reform to the new regime instead. In support of that submission, Power and Water also argued to the Commission that there is no pressing need for reform to the Code at present because there have been no new entrants to the electricity market in the Northern Territory.

2.21 The Commission has a number of problems with these propositions.

2.22 First, it is not for the Commission to say whether a new regime would be better able to achieve the objectives set for economic regulation. That is a matter for the policy makers and, ultimately, the parliament. Rather, the Commission is bound to continue to exercise its powers and responsibilities in the pursuit of its statutory objectives and according to law. In this regard, the Commission has a statutory duty to “*make, monitor the operation of and review from time to time*” the Code (emphasis added). The Commission takes the view that if, on monitoring the operation of the Code, it concludes that the Code needs review, the Commission has a duty to undertake the review, regardless of what might eventually happen to the Commission under some future legislative regime.

2.23 Secondly, a principal objective of the present regime continues to be the encouragement of competition in the Northern Territory market (see section 3 of the Reform Act). The Commission has been provided with some detailed market intelligence that suggests that the lack of a robust ring-fencing code delivering certainty and transparency to prospective new participants is at least one reason why there have been no new entrants in the retail market in the Northern Territory and why Power and Water is the sole market participant and retail supplier. There is a perception that processes for negotiating supply contracts could be improved to give greater certainty that the price and other conditions are fair and reasonable. In addition, NT Treasury has stated to the Commission that deficiencies in the market and regulatory arrangements, as well as small scale, pose significant barrier to competition in the Northern Territory electricity market.

2.24 Therefore, the Commission has concluded that it is proper and necessary for it to review the Code now. Nevertheless, in doing so, the Commission has had regard to the regulatory regimes in other jurisdictions (and particularly the Commonwealth) in developing the Code and it is satisfied that the revised draft Code attached to this Paper is consistent with good regulatory practice throughout the country.

### *The scope of the new Code*

2.25 It was argued to the Commission that the proposed Code has features that differ from ring-fencing codes in other jurisdictions and that some of those features are beyond the power of the Commission.

2.26 The Commission does not accept that argument. Under section 24 of the Commission Act, the Commission is empowered to make codes or rules relating to the

conduct or operations of the industry whenever the Commission is authorised to do so by a relevant Act or by regulations made under the Commission Act. By a regulation made on 4 July 2001 under the Commission Act, the Commission was authorised “to make a Code relating to ring fencing in a regulatory industry”.

2.27 For the purpose of the regulation, “ring-fencing” was defined to mean “the separate operation of related or associated businesses of a licensed entity in a regulated industry”.

2.28 Ring-fencing is achieved in different ways in different jurisdictions. In many places it has been achieved by requiring the different parts of the business to be conducted by separate entities. That has not happened in the Northern Territory. Further, in other jurisdictions, ownership and control of the distribution and transmission businesses is separated entirely from ownership of generation and retail businesses. That has not happened in the Northern Territory either.

2.29 There is no single model for ring-fencing. The regulation authorises the Commission to make a Code relating to the separate operation of related or associated businesses of a licensed entity in the electricity industry in the Northern Territory. To be effective, the Code has to be tailored to that industry. The fact that it is different from the model used in other places is not to the point.

2.30 In this case, the Commission’s endeavour has been to develop a Code that ensures the ‘separate operation’ of the various businesses owned by the only licensed entity in the Northern Territory in ways that are designed to deliver sufficient certainty and transparency about how the separate businesses interact with each other to ensure that prospective new entrants are not discouraged by the fact that they will have to secure supply from a business owned and conducted by their competitor.

2.31 In short, the Commission is satisfied that the revised draft Code attached to this Paper is within its power.

2.32 In addition, the NT Treasury has stated to the Commission that the decision to retain Power and Water as a vertically integrated generation, network and retail business, while at the same time relying on competition to promote efficiency and reliability of supply, heightens the importance of an effective ring-fencing regime. In particular, NT Treasury has stated that effective ring-fencing involves ensuring that the market is delivering fair and reasonable prices and standards and does not discourage investors from entering the market or lead to inefficient consumption decisions.

2.33 The Commission agrees. The revised draft Code attached to this Paper is designed to do exactly what NT Treasury says it should. It will contribute to the transparency and certainty that are necessary pre-conditions of new entrants coming to the market.

#### ***The burden of compliance: third-party provisions***

2.34 It was argued to the Commission that the requirement made of Power and Water in the February and May Drafts to prepare default contracts for the supply of services from the regulated part of the business to third parties would, among other things, impose an excessive operational burden on Power and Water.

2.35 In particular, the Commission notes that the default third-party contract provisions proposed in the February and May Drafts, in a number of respects:

- require prescribed businesses to offer to enter into contracts with third parties;
- are not drafted in ways which make these provisions easy to follow and therefore implement; and
- encompass services for which the default terms and conditions may be many and varied, such that it would be very onerous to define and standardise all services, variants of services, terms and conditions of variants of services and prices for services.

2.36 After consideration, the Commission accepts these arguments and has therefore decided, on practical grounds, to delete the default third-party contract provisions from the revised draft Code attached to this Paper. To compensate, the Commission has clarified and made more practical the provisions relating to related-party contracts.

***The burden of compliance: related-party provisions***

2.37 It was argued to the Commission that the requirement made of Power and Water in the February and May Drafts to prepare formal contracts for the supply of services from the regulated part of the business to an unregulated part and to have the terms of those contracts approved by the Commission would impose an excessive operational burden on those entities.

2.38 While the May Draft ameliorated the burden of those requirements, it still required that formal terms and conditions be prepared but only required approval in respect of the nominated goods and services described in Schedule 3 of the draft Code.

2.39 It was argued that this requirement will impose on Power and Water an unnecessary administrative burden which will involve expense that ultimately will be passed on to consumers. It was suggested to the Commission that, in carrying out its functions, the Commission must have regard to the need “to promote economic efficiency” (see section 6(2)(d) of the Commission Act) and that the requirement to establish formal terms and conditions ran counter to that objective.

2.40 Having considered this submission, the Commission concludes that it should still require the terms and conditions to be reduced to writing. There are two reasons for this.

2.41 First, sub-section 6(2) of the Commission Act lists all of the objectives to which the Commission must have regard in performing its functions. While one of them is to promote economic efficiency, others are “to promote competitive and fair market conduct” and “to facilitate entry into relevant markets”. The Commission has concluded that the model embodied in the draft Code strikes a proper balance between all of the requirements of sub-section 6(2). Even if the proposed obligations are more onerous than those obligations which apply in the presently existing Code, they go no further than is necessary to achieve the statutory objective of promoting competition and efficiency.

2.42 Secondly, while the Commission accepts that the draft Code will impose some new obligations on Power and Water that it did not previously have, it does not believe that the new obligations are materially more onerous than those that are implicit in the presently existing Code. Besides, the requirement to document the terms and conditions on which one licensed business unit of Power and Water supplies goods and services to another licensed business unit of Power and Water is already a condition in Power and Water’s electricity licences. The Commission included this licence condition on the grounds that it was conducive to the promotion of a competitive market. In relation to that licence condition, the Commission has previously secured from Power and Water an undertaking that it would reduce such terms and conditions to writing. The Commission considers that the burden imposed by the draft Code is not materially greater than the burden already accepted by Power and Water as part of this licence undertaking.

***Confidentiality***

2.43 The confidentiality regime proposed in the May Draft was criticised on a number of grounds. In its submission, NT Treasury suggested that “to the extent that Commission considers the existing statutory information disclosure provisions are inadequate, a review of the relevant sections of the Commission Act would appear to represent a more effective approach”.

2.44 The Commission accepts that argument. The relevant provisions have been deleted from the revised draft Code attached to this Paper.

2.45 However, the Commission believes that, for the new Code to be fully effective, the right of confidentiality of regulated entities has to give way to the public interest, in some

circumstances. The inability to disclose relevant information is an impediment to the achievement of the need to provide transparency and certainty to prospective new entrants and to consumers.

2.46 The Commission has undertaken a review of legislation in the other Australian jurisdictions. There is a public interest exception to the regulator's obligation of confidentiality under the National Electricity Regime and in the legislation in each of South Australia, Victoria and Queensland.

2.47 Indeed the relevant provisions of section 26 of the Commission Act are identical with the provisions of section 30 of the *Essential Services Act (SA)* Act with the exception of sub-section 3 of the South Australian Act which says:

*“The Commission may disclose confidential information if the Commission is of the opinion that the public benefit in making the disclosure outweighs any detriment that might be suffered by a person in consequence of the disclosure.”*

2.48 The Commission will be recommending to the Regulatory Minister that such a provision be inserted into the *Utilities Commission Act*.

### **Commission's Revised Draft Decision**

2.49 The Commission's revised Draft Decision is that it will revoke the existing Code in its entirety, and promulgate a new version of the Code in the form of the Revised Draft Code as set out in Appendix A of this paper.



## CHAPTER

## 3

## EXPLANATORY NOTES

## Comments on changes to the Draft Code

4.1 This chapter describes the material changes from the current Code, promulgated in April 2002, to the revised Draft Code now proposed by the Commission.

4.2 The notes are intended to be by way of overview and are not a clause by clause explanation of each clause of the Draft Code.

4.3 To the extent possible in the circumstances, the Commission in preparing the Draft Code has retained the existing chapter structure of the Code, although some chapters have different numbers in the Draft Code.

4.4 Some changes have been made to nomenclature. For example, a *Related Business* is called a *Related Contestable Business* in the Draft Code.

Clause No.	Subject	Comment
1.2	Commencement Date	The <i>Commencement Date</i> is 1 January 2009 or such later date as the Code is made.
1.3	Previous Versions of the Code	The new Code will wholly replace previous versions of the Code from the <i>Commencement Date</i> .
1.4	Application of the Code	The Code will continue to apply only to an <i>Electricity Entity</i> that carries on a <i>Prescribed Business</i> in the Northern Territory.  Clause 1.4(c) has been amended from the May Draft to remove the reference to <i>Outsourced Service Providers</i> . The obligations relating to <i>outsourced service providers</i> are now contained exclusively in clause 9.
1.5	Obligation to Remedy	The obligation to remedy breaches of the Code is now made explicit. It was probably implicit in the existing Code but this puts the matter beyond doubt.  An express requirement to remedy is commonly found in other codes – e.g., clause 1.1.6 Electricity Industry Code (Qld).

Clause No.	Subject	Comment
1.6	Guidelines	The Commission has power (section 7 of the Commission Act) to publish guidelines relating to the performance of its functions. This provision explains how the Commission will issue guidelines in relation to the Code or matters arising under the Code.
2.1	Objectives of Code	The statement of objectives of the Code has been reworded. It makes clear that the purpose of the Code is to achieve the objects of the Commission Act and the Reform Act (as the relevant industry regulation Act). It further elaborates in clause 2.1(a)(iii) on the objectives that specific measures in the Code are directed towards achieving. Clause 2.1(a)(iv) explicitly recognises the need to strike an appropriate balance between the public benefits sought to be achieved by the Code and the costs to the <i>Electricity Entity</i> of delivering those benefits.
2.2	Scope	This provision is new. It is a brief summary of the scope of the operative provisions of the Code.
3	Minimum Ring-Fencing Requirements	<p>The scope of clause 4 of the existing Code as a whole has been expanded by the inclusion of further <i>minimum ring-fencing requirements</i> (as outlined below) and by revision of some of the existing provisions.</p> <p>Clause 3 contains the central operating provisions of the new Code. In developing the new Code, the Commission has been mindful of the need to minimise the administrative burden that the Code inevitably places on <i>Prescribed Businesses</i> while, at the same time, ensuring that the ring-fencing model is sufficiently robust to be effective in the unique circumstances of the Northern Territory electricity market.</p> <p>The Commission believes that the regime embodied in clause 3 achieves a fair and workable balance between the competing interests.</p>
3.2	Related Party Goods and Services	<p>This provision is new. The existing Code does not seek to directly deal with the basis on which goods or services are provided by a <i>Prescribed Business</i> to a <i>Related Business</i> or by a <i>Related Business</i> to a <i>Prescribed Business</i>. It only deals with this indirectly by requiring that goods and services in fact provided also be made available to third parties, who wish to obtain them, on a non-discriminatory arm's length commercial basis.</p> <p>A weakness of the existing Code is that it does not directly set any standards for how goods or services are to be provided by a <i>Prescribed Business</i> to a <i>Related Business</i>.</p>

Clause No.	Subject	Comment
		<p>Clause 3.2 of the new Code seeks to fill that gap.</p> <p>The clause will define such goods and services as <i>related party goods and services</i> and require the Electricity Entity to ensure that such goods and services are provided on terms and conditions that are arm's length.</p> <p>It also provides that the Commission must be provided with reasonable particulars of these terms and conditions if it so requests. It does not require the terms and conditions to be reduced to formal contractual terms.</p>
3.3	Minimum Ring-fencing Requirements - provision of nominated goods and services of a Prescribed Business to a Related Contestable Business	<p>This provision is also new. It in part deals with the reverse of the position dealt with in clause 4.1(e) of the existing Code. A weakness of the existing Code is that it does not directly set any standards for how goods or services are to be provided by a <i>Prescribed Business</i> to a <i>Related Business</i>.</p> <p>The clause applies to two specific cases that are also covered by clause 3.2. They are cases where <i>nominated goods or services</i> are supplied by a <i>Prescribed Business</i> to a <i>Related Contestable Business</i>. In those cases, the terms and conditions of supply must be reduced to writing and the <i>Electricity Entity</i> is required to provide a copy of the terms and conditions to the Commission and also to ensure that supply is actually made on those terms and conditions.</p> <p><i>Nominated goods and services</i> are defined in Schedule 3. They are the services most likely to be required by a new entrant to the market.</p>
3.4	Minimum Ring-fencing Requirements - provision of nominated goods and services of a Prescribed Business to other Customers	<p>Clause 3.4 of the new Code is a reworded equivalent of clause 4.1(e) of the Code. Instead of goods or services being required to be supplied by a <i>Prescribed Business</i> to third parties who wish to obtain them on a 'non-discriminatory arm's length commercial basis', the requirement will now be that the goods or services can only be offered to third parties on terms or conditions that are <i>comparable</i> to those terms and conditions offered to a related business. (It should be noted that the clause does not require the <i>Electricity Entity</i> to offer the services to competitors. It only seeks to regulate the terms on which they must be offered if the <i>Electricity Entity</i> chooses to make them available to a third party.)</p> <p>Further the clause applies not in respect of <u>any</u> goods or services provided to a <i>Related Contestable Business</i> by a <i>Prescribed Business</i> but only to goods or services that are specifically</p>

Clause No.	Subject	Comment
		<p>defined in the Code as <i>nominated goods and services</i>.</p> <p><i>Comparable terms</i> are defined in paragraph (b). There are two kinds. The first are those that are non-discriminatory and no less favourable to the <i>Customer</i> than those on which the same services are supplied to the <i>Related Contestable Business</i>. If those conditions are satisfied, there is no need for the <i>Electricity Entity</i> to involve the Commission.</p> <p>The second kind of <i>comparable terms</i> are those that are approved by the Commission. The Commission has no discretion to refuse to approve them if they meet the test in paragraph (d). It may approve them if they meet the test in paragraph (e).</p> <p>It should be noted that a ‘no less favourable’ requirement exists under the transmission ring-fencing guidelines made by the ACCC/AER under the National Electricity Rules. See clause 7.2(b) of those guidelines. It is a ring-fencing minimum obligation that a TNSP providing ring-fencing services must offer those services to its customers on terms and conditions no less favourable than it provides to itself or its associates.</p>
3.5	Marketing Staff	Clause 3.5 rewords the separation requirement found in clause 4.1(g) of the existing Code to put the onus on the <i>Prescribed Business</i> to ensure its <i>Marketing Staff</i> are not used in the <i>Related Contestable Business</i> rather than vice versa as clause 4.1(g) currently provides. The end result of separation between the two is in substance equivalent.
3.6	Branding and Marketing	Clause 3.6 is new. Requirements of this type are found, for example, in electricity ring-fencing requirements in Victoria: see Electricity Industry Guideline No. 17.
3.7	Claims about Service Standards	Clause 3.7 is new. Requirements of this type are found, for example, in electricity ring-fencing requirements in Victoria: see Electricity Industry Guideline No. 17.
3.8	Websites	Clause 3.8 is new. Requirements of this type are found, for example, in electricity ring-fencing requirements in Victoria: see Electricity Industry Guideline No. 17.
3.9	Confidential Information	Minor amendments have been made to this clause. It now applies to information provided by ‘or in respect of’ a <i>Customer</i> . It clarifies that disclosure of information also can only be made if

Clause No.	Subject	Comment
		otherwise permitted by law. The Commission is of the view that these provisions are too restrictive but it accepts that reform of the existing confidentiality regime is a matter for the parliament and not for the Commission.
4.4	Matters to which the Commission will have regard when considering draft Procedures	Clause 4.4 has been expanded to include the objectives of the Code as one of the things to which the Commission will have regard when considering draft Procedures under clause 4.
4.5	Approval by Commission of Procedures	Clause 4.5(a)(vi) provides another example of the type of conditions which the Commission may impose in approving Procedures under clause 4.
5.4	Matters to which the Commission will have regard in making a decision	Clause 5.4 has been expanded to include the objectives of the Code as one of the things to which the Commission will have regard when making a decision under clause 5.
7	Compliance Procedures and Compliance Reporting	Clause 7 of the Draft Code follows but expands on basic structure of clause 8 of the existing Code.
7.1	Compliance Procedures	Clause 7.1(b) further defines the types of compliance procedures which are required to be put in place by an <i>Electricity Entity</i> .
7.3(d) & (e)	Costs of audit	A minor amendment is made to further specify the circumstances in which an <i>Electricity Entity</i> is responsible for audit costs, and to further provide a mechanism for recovery of those costs by the Commission.
8	Exemptions from Compliance with Specified Obligations	The previous clause 8.1 has been deleted. The Commission considers that the preferable regulatory approach is that exemptions in place under the previous Code should not be automatically carried over into the new Code, and that if an <i>Electricity Entity</i> seeks the continuation of an exemption it should make fresh application.
8.2	Matters to which the Commission will have regard on the application for an exemption	Clause 8.2 has been expanded to include the objectives of the Code as one of the things to which the Commission will have regard when making a decision under clause 8.
9	Outsourcing	Clause 9 of the Draft Code is new.  It is designed to provide specifically for the now common situation of businesses using outsourced service providers to provide services to them in relation to the conduct of their businesses.

Clause No.	Subject	Comment
		<p>Clause 9 follows the general form of other regulatory instruments relating to outsourcing. See for example, the Victorian Electricity Industry Guideline No. 17, Electricity Ring-Fencing, clause 6; Tasmanian 'Functional Ring-fencing Guideline' 2004, clause 4.6; ESC Victorian Rail Access Regime, Ring Fencing Rules, clause 2.8.</p>
10	Interpretation of requirements under the Code	<p>Clause 10 of the Draft Code is new.</p> <p>It follows the form of provisions now commonly found in regulatory instruments which provide for the regulator to determine contested questions or make decisions about the application of regulatory standards expressed in terms of standards involving issues of judgment or degree or which necessarily involve the making of value judgments against standards expressed as concepts.</p> <p>However, to address concerns expressed by some stakeholders, it is also made explicit that this discretion would be exercised in a manner consistent with the objects of the Code, the Commission Act and the Reform Act.</p> <p>Other regulatory provisions give discretion to the regulator to decide whether a service is contestable or non contestable: e.g. Victorian Electricity Industry Guideline No. 14, clause 5.2.</p> <p>Examples of the former type are to be found in the Victorian electricity distribution licences (clause 21.3), retail licences (clause 6.3) and Electricity Industry Guideline No. 14 (clause 7).</p>
10.3	Arm's Length	<p>It is considered desirable to use the defined term '<i>arm's length</i>' and give further definition of the expression. The definition draws on case law about the meaning of the term.</p>
11.2	Compliance with Applicable Laws	<p>This clause is inserted for reasons of clarification. It makes clear that whatever the Commission does under the Code cannot be inconsistent with other applicable laws.</p>
12	Decision Making, Public Consultation and Disclosure of Information by the Commission	<p>This clause is new.</p> <p>There are a range of decision making matters under the Code where it may be considered appropriate for the Commission to consult with other persons, or the public generally, about the matter for decision.</p> <p>This clause aims to provide a comprehensive, but flexible, structure for public consultation by the Commission and the gathering of information which the Commission may require for its</p>

Clause No.	Subject	Comment
		decision making, and will apply where the Code does not otherwise make specific provision for the procedures and processes which the Commission must follow.
13	Interpretation	<p>The Draft Code contains a number of additional defined terms in clause 13.2.</p> <p>Some of the additional defined terms are to give effect to the new provisions of the Draft Code. A number of the terms contain definitions of concepts used in the existing Code.</p> <p>In addition a number of the existing defined terms have been amended or renamed.</p> <p>Comments on a number of the specific defined terms are contained below.</p> <p>The definitions in the existing Code which have been omitted from the Draft Code are:</p> <p>Contestable Market</p> <p>Related Business - now a Related Contestable Business</p>
13.2	Associate	A minor drafting change has been made to this clause to reflect amendments to the <i>Corporations Act</i> since the introduction of the initial definition.
13.2	Commencement Date	The definition operates so that the intended commencement date of the new Code of 1 January 2009 can be delayed if necessary.
13.2	contestable and non-contestable	<p>These definitions have been introduced, and the definition of <i>Contestable Market</i> omitted.</p> <p>The operation of some provisions of the Draft Code will depend on whether the particular goods or services in question are supplied on a <i>contestable</i> or <i>non-contestable</i> basis.</p>
13.2	competition and Competitor	These definitions are included to clarify that the provisions of the Code which operate by reference to competitors of an <i>Electricity Entity</i> or refer to competition in the electricity supply industry are intended to operate whether there is actual or only potential competition in relation to the thing in question.
13.2	Customer	<p>The definition has been amended so, where the context requires, the term also includes customers of a licensed retailer.</p> <p>Presently the term extends only to direct customers of Power and Water and would not include customers of any other <i>Electricity Entity</i> which entered the NT market (e.g., another retailer). The existing definition unduly restricts, for example, the operation of the minimum</p>

Clause No.	Subject	Comment
		ring-fencing obligations in relation to treatment of confidential information of customers.
13.2	Director	Minor amendments are made to this definition to deal with the position of <i>Electricity Entities</i> other than Power and Water, and to more correctly represent the procedure by which directors of Power and Water are appointed.
13.2	Electricity Entity	The definition has been amended to omit reference to the term including, where the context requires, the <i>Associates</i> of the <i>Electricity Entity</i> . The current definition creates potential uncertainty or confusion as to the circumstances in which the Code places an obligation on an <i>Associate</i> as well as an <i>Electricity Entity</i> .
13.2	fair and reasonable	The Code does not attempt to further define what is 'fair and reasonable' but provides that questions of whether something is <i>fair and reasonable</i> may be determined by the Commission according to its opinion of the matter.
13.2	non-discriminatory	<p>The definition draws on approaches taken in other regulatory instruments.</p> <p>Paragraph (a) of the definition is similar to a number of regulatory provisions. See for example, clause 21 Victorian electricity distribution licences; clause 2 Victorian Electricity Industry Guideline No. 17 – Electricity Ring-Fencing; Tasmanian 'Functional Ring Fencing Guideline' 2004 clause 3.</p> <p>Paragraph (b) of the definition is similar to the ring-fencing requirements in section 13.11(f) of the WA Electricity Networks Access Code 2004.</p>
13.2	Related Contestable Business	The definition has been simplified so that essentially a <i>Related Contestable Business</i> will consist of all those businesses (or components of businesses) carried on by an <i>Electricity Entity</i> within the electricity supply industry in the Territory which are outside the scope of a <i>Prescribed Business</i> . That is <i>Related Contestable Businesses</i> will consist of the residue. By definition those elements will be <i>contestable</i> business activities which could be carried on also by a third party.
Schedule 2	Transitional provisions	Although the Draft Code requires certain <i>Procedures</i> to be submitted to the Commission for approval within defined periods after the commencement of the Code (reflecting the provisions of the existing Code), the Commission will not require Power and Water to resubmit approved <i>Procedures</i> again once the new Code

Clause No.	Subject	Comment
		comes into force. Schedule 2 provides the machinery for the existing approvals to continue in force.
Schedule 3	Nominated goods and services	Schedule 3 sets out those services which are nominated goods and services under the Code.



**APPENDIX****A****OCTOBER DRAFT CODE**

The Draft Code shows how the final Code may look with the proposed variations incorporated.

A ‘delta view’ showing the substantive changes proposed by the October Draft (which follows) compared with the version of the Code currently applying is also available on the Commission’s website. Only substantive changes are marked up. Minor changes and certain formatting and consequential changes are not marked up in that document. While the Commission has taken all reasonable care in preparing the ‘delta view’ document, it is provided for the purpose of general guidance only. Interested parties should refer to the original Codes rather than rely on the delta view document.



**Draft 2**

Date: October 2008

# Northern Territory Electricity Ring Fencing Code

Third Version  
1 January 2009



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## FOREWORD

This Third Version of the Northern Territory Electricity Ring Fencing Code (*Code*):

- is made by the Utilities Commission of the Northern Territory pursuant to section 24 of the *Utilities Commission Act*;
- commences operation on 1 January 2009; and
- replaces the previous versions of the *Code*.

Notice of the making of the *Code* was published in the *Gazette* on [insert date].

Any questions regarding the *Code* should be directed in the first instance to the Executive Officer, Utilities Commission, at any of the following:

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### Amendment History

Version	Date made	Date of commencement
1	27 June 2001	1 July 2001
2	29 April 2002	29 April 2002
3	[insert date]	1 January 2009

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# Northern Territory Electricity Ring Fencing Code

## 1. Introduction

### 1.1 Authority

- (a) This *Code* is made by the *Commission* under section 24 of the *Act* and in accordance with the authority granted to the *Commission* by Regulation 2 of the *Utilities Commission Regulations*.
- (b) In making this *Code*, the *Commission* has:
  - (i) sought to promote and achieve the object of the *Act*;
  - (ii) sought to promote and achieve the objects of the *ERA*; and
  - (iii) had regard to the matters listed in section 6(2) of the *Act*.

### 1.2 Date of Commencement

- (a) This *Code* takes effect on and from the *Commencement Date*.

### 1.3 Previous versions of the Code

- (a) This *Code* is the third version of the 'Northern Territory Electricity Ring Fencing Code' made by the *Commission*.
- (b) This *Code* replaces the previous versions of the 'Northern Territory Electricity Ring Fencing Code' made by the *Commission* on and from the *Commencement Date*.
- (c) On and from the *Commencement Date* the previous versions of the 'Northern Territory Electricity Ring Fencing Code' have continued application only in respect of matters and things occurring before the *Commencement Date*.

### 1.4 Application

- (a) An *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must comply with this *Code*.
- (b) An *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must also comply with any *guideline* published by the *Commission* in relation to this *Code*.
- (c) An *Electricity Entity* that is required to comply with this *Code* must also ensure that its *Associates* and *Employees* comply with applicable provisions of this *Code*.

### 1.5 Obligation to remedy

- (a) If an *Electricity Entity* breaches this *Code* it must remedy that breach as soon as practicable.

### 1.6 Guidelines

- (a) The *Commission* may publish *guidelines* relating to the application or interpretation of, or matters arising under, this *Code*.
- (b) The *Commission* must publish a *guideline* by publishing a copy on the website of the *Commission* and by giving notice of the making of the *guideline* or a copy of the *guideline* to each *Electricity Entity* that is required to comply with the *guideline*.
- (c) A *guideline* takes effect from the date of publication of the *guideline* by the *Commission* or from a later date specified in the *guideline*.

## 2. Objectives and Scope

### 2.1 Objectives

- (a) The objectives of this *Code* are to:
- (i) promote and achieve the object of the *Act*;
  - (ii) promote and achieve the objects of the *ERA*;
  - (iii) without limiting paragraphs (i) and (ii) above, promote and safeguard competition and fair and efficient market conduct in the *Electricity Supply Industry* by promoting the simulation of competitive market conduct and preventing the misuse of monopoly power, for example by requiring *Electricity Entities* to implement measures which:
    - (A) prevent the misuse of monopoly power;
    - (B) simulate behaviour and outcomes likely to exist in a competitive market; and
    - (C) ensure that its *Related Contestable Businesses* are not treated by its *Prescribed Businesses* in a manner which confers a non-commercial discriminatory price or non-price advantage on the *Related Contestable Business* as compared to an *arm's length* third party in the same commercial circumstances; and
  - (iv) achieve an appropriate balance between the public benefits of requiring an *Electricity Entity* to comply with this *Code* and the administrative costs to the *Electricity Entity* of complying with this *Code*.

### 2.2 Scope

- (a) The scope of this *Code* includes:
- (i) to require that an *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must comply with the *minimum ring fencing requirements* specified in this *Code*;
  - (ii) to specify the *minimum ring fencing requirements*;
  - (iii) to establish a mechanism for the development and approval of certain *Accounting Procedures, Cost Allocation Procedures* and *Information Procedures* with which an *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must comply;
  - (iv) to provide mechanisms for adding to or amending this *Code*;
  - (v) to provide procedures for adding to or amending the scope of the obligations under this *Code*;
  - (vi) to provide procedures for ensuring compliance with the requirements of this *Code*;
  - (vii) to provide procedures for compliance reporting;
  - (viii) to provide mechanisms for exempting an *Electricity Entity* from compliance with specified requirements of this *Code*; and
  - (ix) to empower the *Commission* to undertake public consultation in relation to certain of the specified requirements of this *Code*.

### 3. Minimum Ring Fencing Requirements

#### 3.1 Financial accounts

- (a) An *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must:
- (i) establish and maintain a separate set of financial accounts and reports in respect of:
    - (A) each *Prescribed Business*; and
    - (B) its *Electricity Business* as a whole,which have been prepared in accordance with the *Accounting Procedures* applying to that *Electricity Entity* from time to time under clause 4; and
  - (ii) allocate any costs that are shared between a *Prescribed Business* and a *Related Contestable Business* in a manner that:
    - (A) complies with the *Cost Allocation Procedures* applying to that *Electricity Entity* from time to time under clause 4; and
    - (B) is otherwise *fair and reasonable*.

#### 3.2 Related Party Goods and Services

- (a) An *Electricity Entity* that:
- (i) carries on both a *Prescribed Business* and a *Related Contestable Business* in the Northern Territory; and
  - (ii) provides any goods or services of a *Prescribed Business* to a *Related Contestable Business*; or
  - (iii) provides any goods or services of a *Related Contestable Business* to a *Prescribed Business*
- (*related party goods and services*),
- must ensure that the *related party goods and services* are provided on terms and conditions that are at *arm's length*.
- (b) If requested by the *Commission*, an *Electricity Entity* referred to in clause 3.2(a) must provide the *Commission* with reasonable particulars of the terms and conditions on which *related party goods and services* are provided within 30 days of receipt of the *Commission's* request.

#### 3.3 Provision of nominated goods or services of a Prescribed Business to a Related Contestable Business

- (a) An *Electricity Entity* that:
- (i) carries on a *Prescribed Business* and a *Related Contestable Business* in the Northern Territory; and
  - (ii) provides any *nominated goods or services* of a *Prescribed Business* to a *Related Contestable Business*,
- must:

- (iii) reduce to writing the terms and conditions (including prices and terms and conditions relating to prices) on which it supplies those *nominated goods or services* to a *Related Contestable Business* ('*related party terms*');
- (iv) provide a copy of its *related party terms* to the *Commission* within 6 months of the *Commencement Date*; and
- (v) ensure that those *nominated goods or services* are only supplied by the *Prescribed Business* to a *Related Contestable Business* on terms and conditions which are consistent with the *related party terms* (as if the *Prescribed Business* and the relevant *Related Contestable Business* were conducted by separate legal entities and the *related party terms* constituted a contract between the *Prescribed Business* and that *Related Contestable Business* for the supply of those goods and services).

### 3.4 Offers to provide *nominated goods or services* to other *Customers*

- (a) An *Electricity Entity* that:
  - (i) carries on a *Prescribed Business* in the Northern Territory;
  - (ii) provides any *nominated goods or services* of that *Prescribed Business* to a *Related Contestable Business*; and
  - (iii) also offers to supply the same type of *nominated goods and services* to other *Customers*,  
  
must ensure that any offer to supply the same type of *nominated goods or services* to other *Customers* is on *comparable terms*.
- (b) *Comparable terms* are terms and conditions of an offer to supply the same type of *nominated goods or services* that either:
  - (i) are:
    - (A) no less favourable to the relevant *Customer* than the relevant *related party terms*; and
    - (B) non-discriminatory; or
  - (ii) have otherwise been approved by the *Commission* under either of clauses 3.4(c) or (e).
- t.
- (c) The *Commission* will approve proposed terms and conditions of supply that differ from the *related party terms* for the same type of *nominated goods or services* if:
  - (i) the differences result from the application of another *applicable law* to the supply of the relevant type of *nominated goods or services*; or
  - (ii) the *Commission* concludes that the differences are *fair and reasonable* in the circumstances having regard to the matters listed in clause 3.4(d).
- (d) In making a determination under clause 3.4(c), the *Commission* must take into account the following matters:
  - (i) the particular characteristics of the relevant type of *nominated goods or services*;
  - (ii) the commercial impact on the *Prescribed Business* of the proposed terms and conditions of supply having regard to:

- (A) the duration of the proposed contract for the supply of the relevant *nominated goods or services*;
- (B) the likely consumption of the *Prescribed Business*'s resources in fulfilling the proposed contract; or
- (C) the credit risks associated with the proposed contract;
- (iii) the requirements set out in clause 10.1(a); and
- (iv) the matters set out in section 6(2) of the *Act*.
- (e) The *Commission* may approve proposed terms and conditions of supply that differ from the *related party terms* for the same type of *nominated goods or services* if the *Commission* considers it would be otherwise *fair and reasonable* to do so in the circumstances.
- (f) The *Commission* may:
  - (i) impose conditions on any approval given for the purposes of this clause 3.4; and
  - (ii) revoke any approval or any condition attaching to an approval given under this clause 3.4 if the *Commission* considers that it is appropriate to do so.

### 3.5 Marketing Staff

- (a) An *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must ensure that:
  - (i) the *Marketing Staff* of its *Prescribed Businesses* are not also used as *Marketing Staff* for its *Related Contestable Businesses*; and
  - (ii) in the event that the *Marketing Staff* of its *Prescribed Businesses* do become or are found to become involved in a *Related Contestable Business*, the involvement immediately ceases.

### 3.6 Branding and marketing

- (a) An *Electricity Entity* that carries on a *Prescribed Business* and a *Related Contestable Business* in the Northern Territory must brand and market itself in a manner that minimises any potential for *Customer* confusion between the *Prescribed Business* and the *Related Contestable Business* of that *Electricity Entity*.

### 3.7 Claims about service standards

- (a) An *Electricity Entity* that carries on a *Prescribed Business* and a *Related Contestable Business* in the Northern Territory:
  - (i) must not market to *Customers* any goods or services in the *Electricity Supply Industry* offered or provided by the *Related Contestable Business* based on the reliability, quality, safety or other attribute of the goods or services provided by a *Prescribed Business* of that *Electricity Entity*; and
  - (ii) must confine any representations it makes to *Customers* about the service standards of any goods or services in the *Electricity Supply Industry* provided by the *Related Contestable Business* to those associated with those goods or services directly provided by the *Related Contestable Business*.

### 3.8 Websites

- (a) Where an *Electricity Entity* that carries on a *Prescribed Business* and a *Related Contestable Business* in the Northern Territory shares a website that *Electricity Entity* must:

- (i) identify on each page of the website which contains material in relation to the *Electricity Business* of that *Electricity Entity* whether the *Prescribed Business* or the *Related Contestable Business* is responsible for the contents of that page; and
- (ii) separate the contents of the website dealing with a *Prescribed Business* from the contents of the website dealing with the *Related Contestable Business* as far as practicable.

### 3.9 Confidential Information

- (a) An *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must ensure that *Confidential Information* provided to a *Prescribed Business* by or in respect of a *Customer* is:
  - (i) used only for the purpose for which that *Confidential Information* was provided by or in respect of that *Customer*;
  - (ii) only disclosed to a *Related Contestable Business* of that *Electricity Entity* if the disclosure of that *Confidential Information* is not prohibited under the *Information Procedures* applying to that *Electricity Entity* under clause 4 from time to time and disclosure is otherwise permitted by law; and
  - (iii) otherwise dealt with in accordance with the *Information Procedures* applying to that *Electricity Entity* under clause 4 from time to time.
- (b) An *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must ensure that any information (including *Confidential Information*):
  - (i) obtained by that *Electricity Entity* (or by its *Associates* or *Employees*) in the course of conducting a *Prescribed Business*; or
  - (ii) known to that *Electricity Entity* (or by its *Associates* or *Employees*) as a result of conducting a *Prescribed Business*; and
  - (iii) which might reasonably be expected to materially affect the commercial interests of a *Competitor* of a *Related Contestable Business* of that *Electricity Entity* if disclosed to that *Related Contestable Business*; or
  - (iv) which might reasonably be expected to provide a competitive advantage to a *Related Contestable Business* of that *Electricity Entity* over a *Competitor* of that *Related Contestable Business* if disclosed to that *Related Contestable Business* without also being disclosed to that *Competitor*,is:
  - (v) used only for the purpose for which that information was provided or obtained;
  - (vi) only disclosed to a *Related Contestable Business* of that *Electricity Entity* if the disclosure of that information is not prohibited under the *Information Procedures* applying to that *Electricity Entity* under clause 4 from time to time and is otherwise permitted by law; and
  - (vii) otherwise dealt with in accordance with the *Information Procedures* applying to that *Electricity Entity* under clause 4 from time to time.

## 4. Compliance with Approved Procedures

### 4.1 Introduction

- (a) In this clause 4 unless the context otherwise requires, a reference to “*Procedures*” includes in each case the *Accounting Procedures*, *Cost Allocation Procedures* and *Information Procedures*.

### 4.2 Submission of final draft *Procedures* for approval by the *Commission*

- (a) An *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must within:

- (i) 3 months (in the case of the *Accounting Procedures* and the *Cost Allocation Procedures*); and
- (ii) 6 months (in the case of the *Information Procedures*),

of the *Commencement Date* submit to the *Commission* for approval final draft *Procedures* for its *Prescribed Businesses* developed in accordance with clause 4.3.

### 4.3 Development of final draft *Procedures*

- (a) The final draft *Procedures* submitted by an *Electricity Entity* under clause 4.2 must be:
- (i) designed to ensure compliance with the *Electricity Entity*'s obligations under clause 3;
- (ii) otherwise consistent with the principles set out in Schedule 1 to this *Code* for each type of *Procedure*; and
- (iii) developed in conjunction with the *Commission* so as to ensure that the final draft *Procedures* when submitted can be approved by the *Commission* without the need for substantial amendments.

### 4.4 Matters to which the *Commission* will have regard when considering draft *Procedures*

- (a) In considering whether to approve any draft *Procedures* submitted by an *Electricity Entity* under clause 4.2, the *Commission* will have regard to (among other things):
- (i) the objectives of this *Code* set out in clause 2.1(a);
- (ii) the matters set out in section 6(2) of the *Act*; and
- (iii) whether the draft *Procedures* give effect to the principles set out in Schedule 1 to this *Code* for that type of *Procedures*.

### 4.5 Approval by the *Commission* may be subject to conditions

- (a) The *Commission* may grant its approval of the draft *Procedures* submitted by an *Electricity Entity* under clause 4.2 subject to such conditions as the *Commission* considers are appropriate in the circumstances including conditions:
- (i) requiring that specific amendments be made to the draft *Procedures* submitted by the *Electricity Entity*;
- (ii) approving the *Procedures* for a fixed term;
- (iii) requiring that the *Procedures* be reviewed at regular intervals by the *Commission* and the *Electricity Entity*;

- (iv) requiring that the *Procedures* must be resubmitted for approval following any change to the *Code* affecting the *Procedures* or when otherwise requested by the *Commission*;
- (v) requiring that the *Electricity Entity* report to the *Commission* concerning the implementation, application and/or compliance with the *Procedures* when requested by the *Commission*; and
- (vi) requiring that the *Electricity Entity* provide information and materials periodically to the *Commission* sufficient to enable the *Commission* to be satisfied, in the opinion of the *Commission*, that the conduct of the *Electricity Entity* in accordance with approved *Procedures* complies with the relevant *minimum ring fencing requirements*.

#### 4.6 Compliance by *Electricity Entity* with *Procedures* and conditions of approval

- (a) An *Electricity Entity* must comply with any *Procedures* approved by the *Commission* from time to time under clause 4.2 and any conditions attaching to the *Commission*'s approval of those *Procedures*.

#### 4.7 Variations to existing *Procedures*

- (a) An *Electricity Entity* may at any time apply to the *Commission* to approve a proposed variation to any existing *Procedures*.
- (b) Unless the *Commission* considers that the application has been made on trivial or vexatious grounds (in which case the *Commission* may reject the application without further notice) an application to vary existing *Procedures* will be dealt with by the *Commission* in accordance with the procedure set out in this clause 4 applying to an application to approve the initial *Procedures*.

#### 4.8 Timing

- (a) The *Commission* must notify an *Electricity Entity* within 30 days after receiving an application from the *Electricity Entity* to approve any *Procedures* (or any variation to the existing *Procedures*) of:
  - (i) whether the *Commission* approves those *Procedures* (or the proposed variation to the existing *Procedures*); and
  - (ii) any conditions attaching to the *Commission*'s approval of those *Procedures* (or the proposed variation to the existing *Procedures*).
- (b) The *Electricity Entity* must implement any *Procedures* within 30 days after the date upon which they are approved by the *Commission*.

#### 4.9 Default by *Electricity Entity*

- (a) If an *Electricity Entity*:
  - (i) fails to submit any of the draft *Procedures* to the *Commission* within the time period specified in clause 4.2 for the submission of that type of *Procedures*; or
  - (ii) submits draft *Procedures* to the *Commission* which require substantial amendment before they can be approved by the *Commission*,

the *Commission* may issue its own *Procedures* which will be deemed for the purposes of this *Code* to be the *Procedures* applying to that *Electricity Entity* until such time as appropriate draft *Procedures* are submitted to the *Commission* and approved.

#### 4.10 Compliance with requirements until *Procedures* are approved

- (a) Until such time as *Procedures* are approved or issued by the *Commission* under this clause 4, an *Electricity Entity* must comply with the principles set out in Schedule 1 to this *Code* for that type of *Procedures* as if those principles were the *Procedures*.

### 5. Adding to or Amending this Code

#### 5.1 Variation or revocation by the *Commission* under the *Act*

- (a) The *Commission* may at any time vary or revoke this *Code* (or any part of this *Code*) in accordance with section 24 of the *Act*.

#### 5.2 Application by an *Electricity Entity* for variation or revocation

- (a) An *Electricity Entity* may request that the *Commission* vary or revoke any part of this *Code*.
- (b) Unless the *Commission* considers that the application has been made on trivial or vexatious grounds (in which case the *Commission* may reject the application without further notice) an application to vary or revoke any part of this *Code* will be dealt with by the *Commission* in accordance with the procedure set out in this clause 5.

#### 5.3 Additional or varied obligations on an *Electricity Entity*

- (a) Without limiting the powers of the *Commission* under section 24 of the *Act* to vary or revoke the *Code*, the *Commission* may vary the *Code* to require that an *Electricity Entity* comply with an obligation in relation to the conduct of a *Prescribed Business* which differs from or is in addition to the minimum obligations set out in clauses 3 and 4 above (including by requiring the *Electricity Entity* to comply with *Procedures* issued by the *Commission* which vary or are additional to the *Procedures* approved or issued by the *Commission* under clause 4 from time to time).

#### 5.4 Matters to which the *Commission* will have regard in making a decision

- (a) In deciding whether to vary or revoke this *Code* (or any part of this *Code*) under clauses 5.1 or 5.2, or impose any additional or varied obligation on an *Electricity Entity* under clause 5.3, the *Commission* will have regard to:
- (i) the objectives of this *Code* set out in clause 2.1(a);
- (ii) the matters listed in section 6(2) of the *Act*; and
- (iii) in the case of a variation to the *Code* which imposes an additional or varied obligation on a particular *Electricity Entity*, the general principle that the administrative cost to that *Electricity Entity* of complying with the additional or varied obligation should not, or should not be likely to in the opinion of the *Commission*, outweigh the benefits to the public from compliance with that additional or varied obligation.

#### 5.5 Consultation by *Commission* with *Electricity Entities*

- (a) Before varying or revoking this *Code*, or imposing any additional or varied obligation on an *Electricity Entity*, under this clause 5, the *Commission* will consult with each *Electricity Entity* in accordance with the procedure set out in clause 6 and otherwise comply with the other requirements of the *Act* and clause 6.

#### 5.6 Compliance with additional or varied obligations

- (a) An *Electricity Entity* must comply with any additional or varied obligation imposed upon that *Electricity Entity* under this clause 5 as and from the date upon which that obligation takes effect under section 24 of the *Act*.

## 6. Procedures for Adding To or Amending Ring-Fencing Obligations

### 6.1 Notification by the *Commission* to interested persons

- (a) The *Commission* must, before:
- (i) varying or revoking this *Code* (or any part of this *Code*); or
  - (ii) imposing an additional or varied obligation on an *Electricity Entity*,  
inform each person known to the *Commission* and whom the *Commission* believes has a sufficient interest in the matter that the *Commission* is considering varying or revoking this *Code* (or any part of this *Code*) or imposing an additional or varied obligation on an *Electricity Entity* by publishing a written notice which at least:
    - (iii) states the nature of the proposed variation, revocation or additional or varied obligation; and
    - (iv) requests submissions by a date specified in the notice (not being a date earlier than 30 days after the date of the notice).
- (b) The *Commission* will also give a copy of any notice published in accordance with this clause 6.1 to each *Electricity Entity* to which the notice relates.

### 6.2 Consideration of submissions by the *Commission*

- (a) The *Commission* must consider any submissions received by the date specified in the notice published under clause 6.1(a) and may (but is not obliged to) consider any submissions received after that date.

### 6.3 Draft decision

- (a) Within 30 days (or such longer period as the *Commission* notifies) after the last day for submissions specified in the notice published under clause 6.1(a), the *Commission* must issue a draft decision stating whether or not it intends to proceed with the proposed variation, revocation or additional or varied obligation.
- (b) The *Commission* must:
- (i) provide a copy of its draft decision to each *Electricity Entity*, any person who made a submission on the matter and any other person who requests a copy; and
  - (ii) request submissions from persons to whom it provided the draft decision by a specified date (not being a date earlier than 30 days after the date the draft decision was issued).

### 6.4 Consideration of submissions on the draft decision

- (a) The *Commission* must consider any submissions it receives by the date specified by the *Commission* under clause 6.3(b) and it may (but is not obliged to) consider any submissions received after that date.

### 6.5 Final decision

- (a) Within 30 days (or such longer period as the *Commission* notifies) after the last day for submissions on the draft decision specified by the *Commission*, the *Commission* must issue a final decision stating:
- (i) whether or not it will proceed with the proposed variation, revocation or additional or varied obligation; and
  - (ii) the final form of that proposed variation, revocation or additional or varied obligation.

- (b) A notice in relation to a variation, revocation or additional or varied obligation will have effect:
  - (i) 30 days after the notice is given to each relevant *Electricity Entity* and, where required, published in the *Gazette*; or
  - (ii) on such later date as the *Commission* specifies in the notice.

## 7. Compliance Procedures and Compliance Reporting

### 7.1 *Electricity Entity* to establish and maintain compliance procedures

- (a) An *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must within 6 months of the *Commencement Date* establish, document, maintain and comply with appropriate auditable internal policies, procedures and systems (“*compliance procedures*”) for ensuring that it complies with its obligations under this *Code*.
- (b) The *compliance procedures* must include policies procedures and systems for:
  - (i) training of *Employees* about the obligations of the *Electricity Entity* under this *Code*;
  - (ii) regular internal audit by the *Electricity Entity* of its compliance with its obligations under this *Code*;
  - (iii) regular reporting to, and consideration by, the *Directors* of the *Electricity Entity* concerning compliance with the obligations of the *Electricity Entity* under this *Code*;
  - (iv) dealing with any complaints made by a *Customer* or other third party to the *Electricity Entity* in connection with non-compliance by the *Electricity Entity* with its obligations under this *Code*; and
  - (v) detecting and reporting to the *Commission* any breach of the *compliance procedures*.
- (c) The *Commission* may (after giving reasonable notice to the *Electricity Entity*) require the *Electricity Entity* to demonstrate to the *Commission’s* satisfaction that:
  - (i) the *Electricity Entity’s compliance procedures* are adequate; and/or
  - (ii) the *Electricity Entity* is complying with its *compliance procedures*.
- (d) Any notification made by the *Commission* to the *Electricity Entity* concerning the *Commission’s* opinion of the adequacy of the *compliance procedures* of that *Electricity Entity* will not affect the *Electricity Entity’s* obligations under this *Code*.

### 7.2 Compliance reports

- (a) An *Electricity Entity* must provide a report to the *Commission*, at reasonable intervals determined by the *Commission*, describing the measures taken by the *Electricity Entity* to ensure compliance with its obligations under this *Code* (a *compliance report*).
- (b) The *compliance report*, and the *Commission’s* assessment of compliance, will be made publicly available by the *Commission* subject to the *Commission* first complying with its obligations under section 26 of the *Act*

### 7.3 Audit

- (a) The *Commission* may, upon reasonable notice to an *Electricity Entity*, appoint an independent auditor to undertake an audit of the *Electricity Entity's* compliance with any of its obligations under this *Code*.
- (b) If the *Commission* nominates standards or requirements to apply to an audit under clause 7.3, the auditor will report in accordance with those standards or requirements.
- (c) The *Commission* will provide a copy of the auditor's report to the *Electricity Entity* as soon as reasonably possible after it has been received from the auditor.
- (d) The *Electricity Entity* will be responsible to pay the costs of undertaking that audit if, in the opinion of the *Commission*, the auditor discovers any failure by the *Electricity Entity* to comply with a material obligation under this Code.
- (e) Upon notification to the *Electricity Entity* by the *Commission*, the *Electricity Entity* must pay the amount of the audit costs to the *Commission* in the amount notified by the *Commission*.

### 7.4 Notification of breaches to the *Commission*

- (a) An *Electricity Entity* must report any breach of its obligations under this *Code* to the *Commission* as soon as reasonably possible after becoming aware that the breach has occurred and must advise of the remedial action that is being undertaken to rectify the breach.

## 8. Exemption from Compliance with Specified Obligations

### 8.1 Application for an exemption

- (a) An *Electricity Entity* may apply to the *Commission* for an exemption from compliance with any obligation (or component of an obligation) under this *Code*.
- (b) A notice requesting an exemption must include all information and materials necessary to support the *Electricity Entity's* application for exemption.

### 8.2 Matters to which the *Commission* will have regard on the application

- (a) In determining whether to grant any exemption, the *Commission* will have regard to:
  - (i) the objectives of this *Code* set out in clause 2.1(a);
  - (ii) the matters listed in section 6(2) of the *Act*; and
  - (iii) the general principle that the *Commission* will only grant an exemption if it is satisfied that the benefit, or likely benefit, to the public of compliance with the relevant obligation will be outweighed by the administrative cost to that *Electricity Entity* of complying with that obligation.

### 8.3 Terms or conditions of exemption

- (a) The *Commission* may grant an exemption:
  - (i) on different terms to those sought by the *Electricity Entity*; or
  - (ii) subject to such conditions as the *Commission* considers are appropriate in the circumstances, including conditions requiring that:
    - (A) the exemption be for a fixed term;

- (B) the continuation of the exemption be subject to review by the *Commission* on such terms as the *Commission* considers appropriate in the circumstances;
- (C) the *Electricity Entity* report to the *Commission* concerning any matter relating to the operation or impact of the exemption; and
- (D) the grant of the exemption be conditional upon the occurrence of a nominated event (for example, the variation of the *Code* to impose an additional or varied obligation on the *Electricity Entity* or the implementation of agreed compliance procedures).

#### 8.4 Procedure for consideration of application

- (a) When the *Commission* receives an application under clause 8.1 the *Commission* must:
  - (i) if it considers that the application has been made on trivial or vexatious grounds, reject the application without further consideration; or
  - (ii) in all other cases within 14 days after receipt of the application, inform each person known to the *Commission* whom the *Commission* believes has a sufficient interest in the matter, that the *Commission* has received the application by publishing a written notice which at least:
    - (A) identifies the *Electricity Entity* that has applied for the exemption and the nature of the requested exemption;
    - (B) states how copies of the application can be obtained; and
    - (C) requests submissions by a date specified in the notice (not being a date earlier than 30 days after the date of the notice).
- (b) The *Commission* must provide a copy of the application to any person within 7 days after the person requests a copy and pays any reasonable fee required by the *Commission*.
- (c) The *Commission* must consider any submissions received by the date specified in the notice published under clause 8.4(a)(ii) and it may (but is not obliged to) consider any submissions received after that date.

#### 8.5 Draft decision

- (a) Within 30 days (or such longer period as the *Commission* notifies) after the last day for submissions specified in the notice published under clause 8.4(a)(ii) the *Commission* must issue a draft decision stating whether or not it intends to grant the exemption sought in that application.
- (b) The *Commission* must:
  - (i) provide a copy of its draft decision to the relevant *Electricity Entity*, any person who made a submission on the matter and any other person who requests a copy; and
  - (ii) request submissions from persons to whom it provides the draft decision by a specified date (not being a date earlier than 30 days after the date the draft decision was issued).
- (c) The *Commission* must consider any submissions it receives by the date specified by the *Commission* under clause 8.5(b) and it may (but is not obliged to) consider any submissions received after that date.

## 8.6 Final decision

- (a) Within 30 days (or such longer period as the *Commission* notifies) after the last day for submissions on the draft decision specified by the *Commission*, the *Commission* must issue a final decision stating whether or not it will grant the exemption sought in that application.
- (b) A final decision under clause 8.6(a) has effect 30 days after the decision is issued to the *Electricity Entity* or such later date as the *Commission* specifies in the notice.

## 8.7 Prescribed Business definition

- (a) An *Electricity Entity* may at any time request that the *Commission* consider whether the requirements set out in paragraph (b) of the definition of ‘*Prescribed Business*’ have been satisfied.
- (b) A request under this clause 8.7 will be dealt with by the *Commission* in the same manner as an application for an exemption from compliance with any obligation (or component of an obligation) under clause 8.1.

# 9. Outsourcing

## 9.1 Outsourced Service Provider

- (a) If an *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory arranges for or uses another entity to perform any of its business functions in relation to a *Prescribed Business* of that *Electricity Entity*, that other entity will be an *Outsourced Service Provider* in relation to that *Electricity Entity* and business function for the purposes of this *Code*.

## 9.2 Use reasonable endeavours to ensure compliance

- (a) If an *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory uses an *Outsourced Service Provider* to perform any of its business functions in relation to a *Prescribed Business* of that *Electricity Entity*, that *Electricity Entity* must use its reasonable endeavours to ensure that the *Outsourced Service Provider* performs that business function in a manner which complies with that *Electricity Entity's* obligations under this *Code*.

## 9.3 Outsourcing agreements

- (a) Without limiting clause 9.2, if an *Electricity Entity* enters into an agreement with an *Outsourced Service Provider* in relation to the performance of any of the business functions of the *Prescribed Business* of that *Electricity Entity* the *Electricity Entity* must ensure that the terms of the agreement are consistent with and facilitate the implementation of this *Code*.

# 10. Interpretation and determination of requirements under this Code

## 10.1 Fair and reasonable

- (a) Any question as to whether a thing is *fair and reasonable* for the purposes of this *Code* is to be decided by the *Commission*:
  - (i) having regard to the objectives of this *Code* set out in clause 2.1(a);
  - (ii) having regard to the matters listed in section 6(2) of the *Act*;
  - (iii) in a manner which is consistent with the objects of the *Act* and the *ERA*; and

- (iv) subject to clauses 10.1(a)(i), (ii) and (iii), otherwise on the basis of the *Commission's* opinion of the fairness and reasonableness of the matter.

## 10.2 Non-discriminatory

- (a) Any question as to whether a thing is *non-discriminatory* for the purposes of this *Code* is to be decided by the *Commission*:
  - (i) having regard to the objectives of this *Code* set out in clause 2.1(a);
  - (ii) having regard to the matters listed in section 6(2) of the *Act*;
  - (iii) in a manner which is consistent with the objects of the *Act* and the *ERA*; and
  - (iv) subject to clauses 10.2(a)(i), (ii) and (iii), otherwise on the basis of the *Commission's* opinion of the matter.
- (b) For the purposes of this *Code*, terms and conditions upon which goods or services are provided or offered or proposed to be provided or offered, are *non-discriminatory* if the terms or conditions:
  - (i) do not unreasonably discriminate, or have the effect of creating unreasonable discrimination between:
    - (A) different *Customers* or classes of *Customers*; or
    - (B) *Customers* and a *Related Contestable Business* of an *Electricity Entity*; and
  - (ii) do not unreasonably disadvantage (whether competitively or financially) a *Customer* relative to a *Related Contestable Business* of an *Electricity Entity*,  
in relation to the provision of the relevant goods or services.

## 10.3 Arm's length

- (a) Any question as to whether a thing is at *arm's length* for the purposes of this *Code* is to be decided by the *Commission*:
  - (i) having regard to the objectives of this *Code* set out in clause 2.1(a);
  - (ii) having regard to the matters listed in section 6(2) of the *Act*;
  - (iii) in a manner which is consistent with the objects of the *Act* and the *ERA*; and
  - (iv) subject to clauses 10.3(a)(i), (ii) and (iii), otherwise on the basis of the *Commission's* opinion of the matter.
- (b) Without limiting clause 10.3(a), for the purposes of this *Code*:
  - (i) a transaction is at *arm's length* if at a minimum the parties to the transaction are unrelated and act severally and independently in forming the transaction and none of the parties has the ability to exert personal influence or control over another party in relation to the transaction; and
  - (ii) if a transaction is between related parties, the transaction is only at *arm's length* if in fact:
    - (A) the parties to the transaction have dealt with each other in relation to negotiation and conclusion of the transaction as if the parties were unrelated to each other;
    - (B) each party, in relation to the dealings between the parties in relation to the transaction, takes no account of the commercial circumstances of or likely

benefits accruing to the other parties from the transaction other than to the extent that would be prudent between unrelated parties; and

(C) the outcome of the dealings between the parties in relation to the transaction is a matter of real bargaining between the parties.

(c) For the purposes of this clause 10.3, parties to a transaction are related parties if a party is an *Associate* of another party to the transaction.

#### 10.4 Effect of disclosure of information

(a) Any question as to whether:

- (i) information might reasonably be expected to materially affect the commercial interests of a *Competitor* of a *Related Contestable Business* of an *Electricity Entity* if disclosed to that *Related Contestable Business* for the purposes of clause 3.9(b)(iii) above; or
- (ii) information might reasonably be expected to provide a competitive advantage to a *Related Contestable Business* of an *Electricity Entity* over a *Competitor* of that *Related Contestable Business* if disclosed to that *Related Contestable Business* without also being supplied to that *Competitor* for the purposes of clause 3.9(B)(iv) above;

is to be determined by the *Commission*:

- (iii) having regard to the objectives of this *Code* set out in clause 2.1(a);
- (iv) having regard to the matters listed in section 6(2) of the *Act*;
- (v) in a manner which is consistent with the objects of the *Act* and the *ERA*; and
- (vi) subject to clauses 10.4(a)(iii), (iv) and (v), otherwise on the basis of the *Commission's* opinion of the matter.

#### 10.5 Determination of goods or services as *contestable* or *non-contestable*

(a) Any question arising under this *Code* as to whether goods or services in the *Electricity Supply Industry* are *contestable* or *non-contestable* is to be determined by the *Commission*:

- (i) having regard to the objectives of this *Code* set out in clause 2.1(a);
- (ii) having regard to the matters listed in section 6(2) of the *Act*;
- (iii) in a manner which is consistent with the objects of the *Act* and the *ERA*; and
- (iv) subject to clauses 10.5(a)(i), (ii) and (iii), otherwise on the basis of the *Commission's* opinion of the matter.

#### 10.6 Determination under paragraph (b) of the definition of *Prescribed Business*

(a) Any question arising under this *Code* as to whether the requirements set out in paragraphs (b)(i) or (b)(ii) of the definition of *Prescribed Business* in clause 13.2 have been satisfied is to be determined by the *Commission*:

- (i) having regard to the objectives of this *Code* set out in clause 2.1(a);
- (ii) having regard to the matters listed in section 6(2) of the *Act*;
- (iii) in a manner which is consistent with the objects of the *Act* and the *ERA*; and
- (iv) subject to clauses 10.6(a)(i), (ii) and (iii), otherwise on the basis of the *Commission's* opinion of the matter.

## 10.7 Carrying on of a business

- (a) For the purposes of this *Code* an *Electricity Entity* is to be regarded as carrying on a *Prescribed Business* or a *Related Contestable Business* (as the case may be) if :
- (i) it is the holder of a *licence* authorising the activities for which a *licence* is required comprising all or part of the relevant *Prescribed Business* or *Related Contestable Business*; or
  - (ii) it otherwise engages in the activity of owning, controlling or operating the relevant *Prescribed Business* or *Related Contestable Business*.
- (b) Any question arising under this *Code* as to whether an *Electricity Entity* is to be regarded as carrying on a *Prescribed Business* or a *Related Contestable Business* is to be determined by the *Commission*:
- (i) having regard to the objectives of this *Code* set out in clause 2.1(a);
  - (ii) having regard to the matters listed in section 6(2) of the *Act*;
  - (iii) in a manner which is consistent with the objects of the *Act* and the *ERA*; and
  - (iv) subject to clauses 10.7(b)(i), (ii) and (iii), otherwise on the basis of the *Commission's* opinion of the matter.

## 10.8 Commission to determine matters arising under this clause

- (a) The *Commission* may from time to time in its discretion consider and decide any issue arising under this clause 10.
- (b) An:
- (i) *Electricity Entity*; or
  - (ii) any other person who has, in the opinion of the *Commission*, a sufficient interest in the matter,
- may request that the *Commission* may make such a decision.

# 11. Preservation of Other Obligations and Compliance with Applicable Laws

## 11.1 No derogation from other obligations

- (a) Nothing in this *Code* will derogate from any obligation imposed upon an *Electricity Entity* under the *Act*, the *ERA*, any regulation made under those Acts, any condition of a *licence* issued to the *Electricity Entity* or any other code made by the *Commission* under the *Act*.

## 11.2 Compliance with Applicable Laws

- (a) The *Commission* must not by:
- (i) a *guideline*;
  - (ii) a direction, notice or other instrument issued to an *Electricity Entity* under this *Code*;
  - (iii) the terms and conditions of an approval given by the *Commission* under this *Code*; or
  - (iv) any other decision made, or requirement determined by, the *Commission* under this *Code*,

impose a requirement on an *Electricity Entity* which contravenes or is inconsistent with another *applicable law*.

## 12. Decision Making, Public Consultation and Disclosure of Information by the *Commission*

### 12.1 Interpretation

- (a) For the purposes of this clause 12:
- (i) “*confidential material*” means *relevant material* which the *disclosing person* advises the *Commission* is of a confidential or commercially sensitive nature;
  - (ii) “*decision*” includes a decision, determination, approval, requirement, specification, standard, submission, obligation or request (whether draft or final) to be made, issued, given, imposed, reviewed or considered by the *Commission* under this *Code*;
  - (iii) “*decision making conduct*” means procedures or conduct of the *Commission* in connection with or for the purposes of making a *decision* or issuing a *document* under this *Code*;
  - (iv) “*disclosing person*” means a person who provides *relevant material* to the *Commission* under this *Code*;
  - (v) “*document*” includes a *guideline*, *Procedure*, *compliance procedures*, exemption, notice, direction or other instrument issued under or provided for in this *Code*.
  - (vi) “*matter for consultation*” means matters in connection with a *document* or *decision* that under this *Code* is a matter which is required to be or may be the subject of consultation under this clause; and
  - (vii) “*relevant material*” means information, material or a document provided to the *Commission* under or for the purposes of this *Code*.

### 12.2 Application of this clause

- (a) This clause 12 applies in addition to, and not in derogation of, the other provisions of this *Code*.
- (b) Where another provision of this *Code* provides that *decision making conduct* must occur in a particular manner the *Commission* must undertake the *decision making conduct* in that manner.
- (c) To the extent that it is possible to do so without acting inconsistently with another provision of this *Code*, the *Commission* may (but is not obliged to) undertake *decision making conduct* in accordance with this clause 12.
- (d) To the extent that there is inconsistency between this clause 12, or the application of this clause in any circumstances, and another provision of this *Code* in relation to *decision making conduct*:
- (i) this clause is to be construed as operating to the fullest extent possible in the circumstances consistently with the other provision; and
  - (ii) the other provision otherwise prevails over this clause to the extent of the inconsistency.

### 12.3 Decision making process and provision of information

- (a) Where under this *Code* the *Commission* is authorised or required to engage in *decision making conduct* the *Commission* may:
- (i) inform itself about any matter it considers relevant to the making of the *decision* or issue of the *document* in any way it thinks appropriate; and
  - (ii) by written notice require an *Electricity Entity* to provide the *Commission*, within the period specified in the notice, with *relevant material* specified in the notice in the possession or control of the *Electricity Entity* which, in the opinion of the *Commission*, is relevant to the making of the *decision* or to the issue of the *document* and which, in the opinion of the *Commission*, the *Commission* reasonably requires for the performance of its functions.
- (b) An *Electricity Entity* must comply with a notice issued under clause 12.3(a)(ii) of this *Code*.

### 12.4 Matters for consultation

- (a) Where under this *Code* the *Commission* is authorised or required to engage in *decision making conduct* the *Commission* may, to the extent to which the *Commission* considers to be appropriate in the circumstances, treat the making of a *decision* or the issue of a *document* or matters in connection with the making of the *decision* or issue of the *document* as a *matter for consultation*.

### 12.5 Powers of Commission in relation to matters for consultation

- (a) The *Commission* may take such steps as the *Commission* considers appropriate to consult in relation to a *matter for consultation* including by:
- (i) undertaking consultation of the public and interested persons in a manner determined by the *Commission* in relation to the *matter for consultation*;
  - (ii) making disclosure to the public and interested persons of information and materials (including without limitation *relevant material* provided to the *Commission* by an *Electricity Entity*) in relation to the *matter for consultation*;
  - (iii) producing and publishing an issues paper examining the issues relating to the *matter for consultation*;
  - (iv) inviting submissions from the public and interested persons in relation to the *matter for consultation*;
  - (v) making a draft decision if, in the opinion of the *Commission*, the circumstances warrant the making of a draft decision in relation to the *matter for consultation*;
  - (vi) inviting submissions from the public and interested persons in relation to a draft decision of the *Commission* in relation to the *matter for consultation*;
  - (vii) publishing submissions received by the *Commission* in relation to the *matter for consultation*;
  - (viii) making a final decision in relation to the *matter for consultation*;
  - (ix) publishing a final decision in relation to the *matter for consultation*;
  - (x) publishing the *decision* or *document* made or issued by the *Commission*;
  - (xi) publishing any document or thing referred to in a *decision* or *document* made or issued by the *Commission*; or

- (xii) requiring an *Electricity Entity* to publish any document or thing referred to in a *decision* or *document* made or issued by the *Commission*.
- (b) Clause 12.5 (a) does not limit how the *Commission* may engage in *decision making conduct* in relation to a *matter for consultation*.

## 12.6 Treatment of confidential information

- (a) Subject to clause 12.6(b), where a *disclosing person* provides *relevant material* to the *Commission* in accordance with this *Code*, the *disclosing person* may, at the time at which the *relevant material* is provided, give notice to the *Commission* that the *relevant material* or part of the *relevant material* is *confidential material*.
- (b) A *disclosing person*:
  - (i) may give notice to the *Commission* that *relevant material* is *confidential material* only if the *relevant material* is in fact of a confidential or commercially sensitive nature, and where only a part or parts of the *relevant material* is *confidential material*, the *disclosing person* may give notice only in respect of those parts; and
  - (ii) must in a notice under clause 12.6(b)(i) specify in reasonable detail the basis on which the *disclosing person* makes the claim that the *relevant material* is *confidential material*.
- (c) The *Commission* must not disclose or publish any *confidential material* to any other person unless disclosure is authorised under section 26(2) of the *Act*.
- (d) Nothing in this clause 12.6 will limit any obligation of an *Electricity Entity* under this *Code* to provide information to another party (including the *Commission*).

## 13. Interpretation

### 13.1 Italicised terms

- (a) In this *Code*, words appearing like *this* will have the meaning set out in clause 13.2.

### 13.2 Defined terms

- (a) In this *Code*, unless the contrary intention appears:
  - “*Accounting Procedures*” means the procedures of that name approved or issued by the *Commission* under clause 4 of this *Code*;
  - “*Act*” means the *Utilities Commission Act*;
  - “*applicable laws*” means legislation, regulations, codes or other instruments with which an *Electricity Entity* must comply under the terms of a *licence* issued to the *Electricity Entity*;
  - “*arm’s length*” has the meaning given to that term in clause 10.3 of this *Code*;
  - “*Associate*” means in relation to:
    - (a) an *Electricity Entity* that is a legal entity incorporated pursuant to the *Corporations Act*, a person that would be an associate of that *Electricity Entity* under Division 2 of Part 1.2 of the *Corporations Act* if sections 13, 16(2) and 17 did not form part of the *Corporations Act*; and
    - (b) an *Electricity Entity* that is not a legal entity incorporated pursuant to the *Corporations Act*, a person that would be an associate of that *Electricity Entity* under Division 2 of Part 1.2 of the *Corporations Act* if:

- (i) sections 13, 16(2) and 17 did not form part of the *Corporations Act*; and
- (ii) that *Electricity Entity* were a legal entity incorporated pursuant to the *Corporations Act*;

“*Code*” means this 'Northern Territory Electricity Ring Fencing Code';

“*Commencement Date*” means the later of 1 January 2009 or the date set out in the notice published in the *Gazette* making this *Code* as the date of commencement of this *Code*;

“*Commission*” means the Utilities Commission of the Northern Territory established by the *Act*;

“*comparable terms*” has the meaning in clause 3.4(b) of this *Code*

“*competition*” means either actual or potential rivalry or competition in relation to a business (or a component of a business) or activity in the *Electricity Supply Industry*;

“*Competitor*” means an entity (whether identifiable, actual or notional) which either actually or potentially may be in *competition* with an *Electricity Entity*;

“*compliance procedures*” has the meaning in clause 7.1(a) of this *Code*;

“*compliance report*” has the meaning in clause 7.2(a) of this *Code*;

“*Confidential Information*” means information which is or has been provided to, or has otherwise been obtained by, an *Electricity Entity* (or *Associate* of that *Electricity Entity*) in connection with the carrying on of a *Prescribed Business* and which is confidential or commercially sensitive and includes information which is derived from any such information;

“*confidential material*” has the meaning in clause 12.1(a) of this *Code*;

“*contestable*” in relation to goods or services within the *Electricity Supply Industry* means goods or services in relation to which there exists or potentially exists *competition* in a market in relation to the supply of the relevant goods or services;

“*Corporations Act*” means the *Corporations Act 2001* (Cth.);

“*Cost Allocation Procedures*” means the procedures of that name approved or issued by the *Commission* under clause 4 of this *Code*;

“*Customer*” means a person who engages (or proposes to engage) in the activity of purchasing goods or services from a *Prescribed Business* of an *Electricity Entity*;

“*decision*” has the meaning in clause 12.1(a) of this *Code*;

“*decision making conduct*” has the meaning in clause 12.1(a) of this *Code*;

“*Director*” has the same meaning as in the *Corporations Act* and includes in the case of the *PWC* its chief executive officer from time to time and each of the persons appointed as directors of *PWC* in accordance with the *Government Owned Corporations Act*.

“*disclosing person*” has the meaning in clause 12.1(a) of this *Code*;

“*document*” has the meaning in clause 12.1(a) of this *Code*;

“*Electricity Business*” means in relation to an *Electricity Entity*, all of the businesses conducted by that *Electricity Entity* in the *Electricity Supply Industry*;

“*Electricity Entity*” has the same meaning as is given to that term in the *ERA*;

“*Electricity Supply Industry*” has the same meaning as is given to that term in the *ERA*;

“*Employee*” means a *Director* or other officer, employee, consultant, contractor, or agent of an *Electricity Entity*;

“*ERA*” means the *Electricity Reform Act*;

“*fair and reasonable*” has the meaning in clause 10.1 of this *Code*;

“*Gazette*” has the same meaning as is given to that term in the *Interpretation Act*;

“*guideline*” means a guideline published by the *Commission* under section 7 of the *Act*;

“*Information Procedures*” means the procedures of that name approved or issued by the *Commission* under clause 4 of this *Code*;

“*licence*” means a licence granted under the *ERA*;

“*Marketing Staff*” means an *Employee* of an *Electricity Entity* who is directly involved in the sale, promotion or advertising of any goods or services provided by the *Electricity Entity* to *Customers* (whether or not that *Employee* is involved in other functions) but does not include an *Employee* who is only involved in:

- (a) strategic decision making, including the executive officer or officers to whom *Marketing Staff* report either directly or indirectly; or
- (b) technical, administrative, accounting or service functions;

“*matter for consultation*” has the meaning in clause 12.1(a) of this *Code*;

“*minimum ring fencing requirements*” means the requirements under clause 3 of this *Code*;

“*NEMMCO*” means the National Electricity Market Management Company Limited ACN 072 010 327 and includes any body which takes over its functions after the *commencement date*;

“*nominated goods or services*” has the meaning in Schedule 3 of this *Code*;

“*non-contestable*” in relation to goods or services provided in the *Electricity Supply Industry* means goods or services other than *contestable* goods or services;

“*non-discriminatory*” has the meaning in clause 10.2 of this *Code*;

“*Outsourced Service Provider*” has the meaning in clause 9.1(a) of this *Code*;

“*Prescribed Business*” means:

- (a) a business (or component of a business) carried on by an *Electricity Entity* which consists of:
  - (i) the operation of an electricity network and the provision of network access services in relation to that electricity network to *Customers*;
  - (ii) the sale of electricity to non-contestable *Customers*; or
  - (iii) a business (or component of a business) carried on by an *Electricity Entity* which consists of the provision of any other goods or services in the *Electricity Supply Industry*:
    - (A) to which the Regulations authorising the making of this *Code* extend to; and

- (B) which the *Commission* determines in accordance with clause 5 are *non-contestable* goods or services; or
- (b) the business carried on by the *PWC* of generating electricity for sale (whether to third parties or notionally to another business division of the *PWC*) carried on by the *PWC*, until such time as the *Commission* is satisfied that:
  - (i) the *PWC* no longer has a substantial degree of market power in the market for the generation of electricity for sale in respect of a particular geographical area; or
  - (ii) this *Code* should no longer apply to that business; or
- (c) the provision of power system control and dispatch services in relation to any electricity network by the *PWC* (other than in its capacity as an agent of, or service provider to, *NEMMCO*);

“*Procedure*” has the meaning given to it by clause 4.1 of this *Code*;

“*publish in the prescribed manner*” means:

- (a) to provide the relevant thing to the *Commission*;
- (b) to publish, and keep published at all times while the relevant thing is in force, the relevant thing on the website of the *Electricity Entity*; and
- (c) to publish the relevant thing in the *Gazette*.

“*PWC*” means the Power and Water Corporation established under the *Power and Water Corporation Act*;

“*Related Contestable Business*” means, in relation to an *Electricity Entity*, any business (or component of a business), other than a *Prescribed Business*, carried on by that *Electricity Entity* or an *Associate* of that *Electricity Entity* in the *Electricity Supply Industry*;

*related party goods and services* has the meaning in clause 3.2(a) of this *Code*;

*related party terms* has the meaning in clause 3.3 of this *Code*; and

“*relevant material*” has the meaning in clause 12.1(a) of this *Code*.

### 13.3 Other interpretation principles

- (a) In this *Code*, unless the context otherwise requires:
  - (i) if a term is defined in the *ERA* or the *Act* and is not otherwise defined in clause 13.2, that term will have the same meaning as is given to that term under the *ERA* or the *Act*;
  - (ii) headings are for convenience only and do not affect the interpretation of this *Code*;
  - (iii) words importing the singular include the plural and vice versa;
  - (iv) words importing a gender include any gender;
  - (v) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency and vice versa;
  - (vi) a reference to any thing includes a part of that thing;

- (vii) a reference to a clause, Schedule or part of a clause or Schedule is a reference to a clause, Schedule or part of this *Code*;
- (viii) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, ordinances, by-laws and determinations issued under that statute;
- (ix) other parts of speech and grammatical forms of a word or phrase defined in this *Code* have a corresponding meaning;
- (x) mentioning an example or anything after the words “include”, “includes” or “including” will not limit what else might be included;
- (xi) a period of time:
  - (A) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
  - (B) which commences on a given day or the day of an act or event is to be calculated inclusive of that day;
- (xii) a reference to:
  - (A) a day is a reference to a period commencing immediately after midnight and ending the following midnight; and
  - (B) a month is a reference to a calendar month; and
- (xiii) a reference to an accounting term is to be interpreted in accordance with accounting standards under the *Corporations Act* and, if not inconsistent with those accounting terms, generally accepted principles and practices in use from time to time in Australia in the *Electricity Supply Industry*.

#### 13.4 Making of an instrument or decision

- (a) Where this *Code* authorises the making of an instrument or decision:
  - (i) the power includes the power to amend or repeal the instrument or decision; and
  - (ii) the power to amend or repeal the decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

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## SCHEDULE 1

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### Accounting, Cost Allocation and Information Principles

#### 1. Accounting Principles

- 1.1 The *Accounting Procedures* will only be approved by the *Commission* if:
- (a) they ensure compliance with the relevant *minimum ring-fencing requirements*;
  - (b) they are consistent with the accounting policies and procedures for other regulatory instruments;
  - (c) their utilisation involves a recognisable and rational economic basis;
  - (d) the resultant financial information satisfies the concepts of relevance and reliability, thereby ensuring that the substance of the underlying transactions and events is reported; and
  - (e) they comply with the principles set out in this Schedule 1.
- 1.2 The *Accounting Procedures* must be presented to the *Commission* in a manner that ensures that the *Commission* may readily understand the methodologies and procedures comprising such *Accounting Procedures* and the resultant financial statements and reports of each *Prescribed Business* and its *Electricity Business* as a whole.
- 1.3 The *Accounting Procedures* must conform to Australian Accounting Standards wherever possible.
- 1.4 The *Accounting Procedures* must ensure the reporting of the substance of transactions by:
- (a) where substance and form differ, reporting the substance rather than the legal form of a transaction or event;
  - (b) in determining the substance of a transaction, considering all its aspects and implications, including the expectations of and motivations for, the transaction; and
  - (c) for the purposes of determining the substance of a transaction, viewing in aggregate a group or series of transactions that achieves, or is designed to achieve, an overall commercial effect.
- 1.5 An *Electricity Entity* must maintain accounting and reporting arrangements which:
- (a) enable financial statements and reports to be prepared for each *Prescribed Business* and its *Electricity Business* as a whole; and
  - (b) provide information in the financial statements and reports that can be verified.
- 1.6 Information must be presented in financial statements and reports in the most understandable manner, without sacrificing relevance or reliability.
- 1.7 The financial statements and reports prepared by an *Electricity Entity* in compliance with its obligations under this *Code* must:
- (a) give a *fair and reasonable* view of the profit and loss and the balance sheet relating to each *Prescribed Business* and its *Electricity Business* as a whole;
  - (b) be capable of certification as such by an auditor when and if required by the *Commission*;
  - (c) be derived from the statutory accounts or their equivalent of the *Electricity Entity*; and

- (d) contain the entirety of the activities of each *Prescribed Business* and its *Electricity Business* as a whole by:
  - (i) eliminating costs not related to each *Prescribed Business* and (where applicable) its *Electricity Business* as a whole;
  - (ii) not consolidating amounts from statutory accounts of different entities; and
  - (iii) consolidating or disaggregating statutory account amounts within an entity in order to prepare financial statements.
- 1.8 If some or all of the activities of an *Electricity Entity* are carried out by an entity that does not have statutory accounts, all financial representations of *Prescribed Business* activities by such an entity must be capable of being audited by an external independent auditor.
- 1.9 An *Electricity Entity* must present on a fair and consistent basis, from the accounting records that underlie its statutory accounts, the costs, revenues, assets employed and liabilities that may be reasonably attributed to each *Prescribed Business* and its *Electricity Business* as a whole.
- 1.10 The financial statements and reports of each *Prescribed Business* and its *Electricity Business* as a whole must, in so far as is reasonably practicable, be prepared in accordance with the accounting principles and policies applicable to the statutory accounts.
- 1.11 The financial statements and reports of each *Prescribed Business* and its *Electricity Business* as a whole must, in so far as is reasonably practicable, be prepared in a consistent manner so that the *Commission* can make comparisons between them over time.
- 1.12 An *Electricity Entity* must provide to the *Commission* full and detailed documentation of any policies and procedures that the *Electricity Entity* may have used to prepare the financial statements and reports, that are additional to or in place of, the accounting principles and policies used to prepare its statutory accounts.
- 1.13 The *Directors* of an *Electricity Entity* will be responsible for the purposes of this *Code* for the preparation and presentation of the financial statements and reports, and the information they contain.

- 1.14 The *Directors* of an *Electricity Entity* must ensure that the *Electricity Entity* keeps accounting records that:
- (a) correctly record and explain the transactions and financial position of each *Prescribed Business* and its *Electricity Business* as a whole;
  - (b) enable financial statements and reports to be prepared in accordance with this *Code*; and
  - (c) are capable of allowing an auditor to conveniently and properly form an opinion on the basis of those financial statements and reports as to the level of compliance by the *Electricity Entity* with the requirements of this Schedule, the *Accounting Procedures* and the *minimum ring-fencing requirements*.

## 2. Cost Allocation Principles

- 2.1 The *Cost Allocation Procedures* will only be approved by the *Commission* if:
- (a) they ensure compliance with the relevant *minimum ring-fencing requirements* ;
  - (b) they are consistent with the accounting policies and procedures for other regulatory instruments;
  - (c) their utilisation involves a recognisable and rational economic basis;
  - (d) the resultant financial information satisfies the concepts of relevance and reliability, thereby ensuring that the substance of the underlying transactions and events is reported; and
  - (e) they comply with the principles set out in this Schedule 1.
- 2.2 The *Cost Allocation Procedures* must be presented to the *Commission* in a manner that ensures that the *Commission* may readily understand the methodologies and procedures comprising such *Procedures* and the resultant financial statements and reports prepared by the *Electricity Entity*.
- 2.3 The cost allocations prepared by the *Electricity Entity* in compliance with its obligations under this *Code* must be capable of certification as such by an auditor when and if required by the *Commission*.
- 2.4 For the purpose of financial statements and reports required to be provided to the *Commission* under this *Code* or for other regulatory purposes, the allocation of accounts between each *Prescribed Business* and the activities of the *Electricity Business* as a whole and across segments of a *Prescribed Business* are to be based on the principle that:
- (a) items which are directly attributable to a *Prescribed Business* or to the *Electricity Business* as a whole and segments of a *Prescribed Business* are assigned accordingly; and
  - (b) items not directly attributable, are to be allocated to a *Prescribed Business* or to the *Electricity Business* as a whole and across segments of the *Prescribed Business* using an appropriate allocator, as indicated in following paragraphs.
- 2.5 An item may be directly attributable to a *Prescribed Business* or to the *Electricity Business* as a whole but not directly attributable to a segment of a *Prescribed Business*. In these circumstances, the allocation across segments of *Prescribed Businesses* will be made using an appropriate allocator as indicated in the following paragraphs.
- 2.6 Items that are not directly attributed either to a *Prescribed Business* or to the *Electricity Business* as a whole or to a segment of a *Prescribed Business* are to be allocated on a causation basis. Allocation based on avoidable cost is not permitted.

- 2.7 An *Electricity Entity* must produce for each item that has not been directly attributed to a *Prescribed Business* or the *Electricity Business* as a whole and/or *Prescribed Business* segment supporting paper work that includes:
- (a) the amounts that have been allocated to the *Prescribed Business* or the *Electricity Business* as a whole and/or *Prescribed Business* segment and amounts that have not been so allocated; and
  - (b) the numeric quantity of each allocator.
- 2.8 If an item is immaterial and a causal relationship cannot be established without undue cost and effort, the *Electricity Entity* may effect an allocation of these items on a non-causal basis, provided it is accompanied by a supporting note documenting for each such item:
- (a) a defensible basis of allocation (which must not be avoidable cost);
  - (b) the reason for choosing that basis; and
  - (c) an explanation why no causal relationship could be established.
- 2.9 A non-causal basis of allocation may only be applied to the extent that:
- (a) the aggregate of all items subject to all non-causal bases of allocation is not material to the financial statements or reports; or
  - (b) an *Electricity Entity* can demonstrate that there is likely to be a strong positive correlation between the non-causal basis and the actual cause of resource or service consumption or utilisation that those costs represent.
- 2.10 An item is material if its omission, misstatement or non-disclosure has the potential to prejudice the understanding of the financial position and nature of the *Prescribed Business* or the *Electricity Business* as a whole (whichever is applicable), gained by reading the financial statements and reports.
- 2.11 All bases of allocation must be explained and documented in the *Cost Allocation Procedures*.

### 3. Information Principles

- 3.1 The *Information Procedures* will set out the procedures to be followed by staff of an *Electricity Entity* involved in the conduct of a *Prescribed Business* for the purpose of identifying, and then appropriately handling, storing, sharing and publishing, information that is either:
- (a) deemed to be *Confidential Information*; or
  - (b) capable of materially affecting the commercial interests of a *Competitor* of a *Related Contestable Business*.
- 3.2 The proposed *Information Procedures* must contain procedures for ensuring that the identification and the handling, storing, sharing and publishing of such information will not provide a competitive advantage to the *Related Contestable Business* over any *Competitor* of a *Related Contestable Business*.
- 3.3 If an *Electricity Entity* proposes to allow the disclosure of information of the type referred to in clause 3.1 of this Schedule 1 to an employee, consultant, contractor or agent involved in the conduct of a *Related Contestable Business*, the *Information Procedures* must identify categories of information which will also be made available to *Competitors* of the *Related Contestable Business*.
- 3.4 Without limiting the matters which may be covered in the *Information Procedures*, those *Procedures* should deal with the electronic, physical and procedural security measures that the *Electricity Entity* proposes to employ in respect of the conduct of a *Prescribed Business* (including separation of office space, access to information systems and procedures for the

minimisation of *Customer* confusion and opportunities for preferential treatment or other unfair competitive advantage).

#### 4. Scope of Principles

- 4.1 Nothing in these principles will limit the matters which the *Commission* may take into account in approving or issuing any *Procedures* or imposing any conditions upon its approval of any *Procedures*.

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## SCHEDULE 2

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### Transitional provisions

#### 1. Continuation of approved *Procedures*

- (a) The *Accounting Procedures*, *Cost Allocation Procedures* and *Information Procedures* of an *Electricity Entity* which were approved by the *Commission* and were in force immediately before the *Commencement Date*:
  - (i) will continue in force and deemed to be approved *Procedures* for the purposes of clause 4 of this *Code*; and
  - (ii) will continue to be subject to any conditions relating to the *Commission's* approval of those *Procedures*.
- (b) An *Electricity Entity* referred to in clause 1(a) of this Schedule 2 is not required to comply with the requirements of clause 4.2 of this *Code* in relation to that approved *Procedure*.

SCHEDULE 3

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*Nominated goods and services*

- (a) The generation of electricity by *PWC* for sale or supply to an *Electricity Entity* issued with a licence authorising the selling of electricity (“*Wholesale Electricity Generation Services*”).
- (b) Network access services, as defined in clause 3 of the NT Electricity Networks (Third Party Access) Code (“*Network Access Services*”).