



**POWER AND WATER CORPORATION**

Submission to NT Utilities  
Commission Draft Report:  
Review of Network Access  
Code

April 2003

*This report contains 34 pages*

Submission to NT Utilities Commission Draft Report Final

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# **1 Background and Purpose**

This submission is Power and Water's response to the Inquiry into the *Effectiveness of the NT Electricity Network Access Code: Draft Report* ('the Draft Report').

## **1.1 Scope of this Submission**

Power and Water understood that there would be three stages to the Code review process:

- a) the Regulator's Issues Paper would foreshadow and discuss substantive issues in reviewing the Code, calling for public submissions on those issues – around 42 issues were raised in the Issues Paper;
- b) Drawing on the submissions received, the Regulator would form a definitive view as to those defined issues, form recommendations as to those issues, and provide a Draft Report for public consultation – this submission responds to the Draft Report;
- c) Following a period of public consultation, the Report would be finalised by the Regulator and provided to the Minister.

The Draft Report contained 62 recommendations, each of which can be categorised as either:

- considered in the Issues Paper and supported by Power and Water in its submission on the Issues Paper. This submission does not address these issues;
- considered in the Issues Paper, and were not supported by Power and Water in its submission on the Issues Paper. This submission further addresses these issues; or
- introduced for the first time in the Draft Report. This submission addresses these issues.

Attachment 1 contains a list of all recommendations supported and unsupported by Power and Water.

## **1.2 Context of this submission**

Power and Water is concerned that:

- the Inquiry's Draft Report raised substantial new proposals not canvassed in the Issues Paper in December. While the 14 day consultation period and subsequent 28 day finalisation period is acceptable for matters originally discussed in December, it does not allow these new matters to be dealt with properly. This is because the new issues are numerous, important, wide ranging and complex;
- many of the Draft Report's recommendations for further review do not specify the consultation and other processes by which matters will be resolved;

- it is vitally important for potential investors and customers to have confidence that the Code and the way in which it is developed, are consistent with generally accepted regulatory standards and principles. There are significant risks that:
  - the apparent hastiness and late introduction of important proposals to the process; and
  - the deviation of several substantive proposals such as the absence of an appeals mechanism, from generally accepted regulatory principles;

may signal to stakeholders that:

- the Inquiry's findings may not be based on a full understanding of the issues and their implications; and
- further reviews will be required.

Such regulatory risks increase the cost of investment, to the detriment of the Territory. Most regulatory regimes have the objective of avoiding such risks.

It is simply not apparent to Power and Water what the imperative is that requires such an unduly hasty Inquiry process that may introduce these risks to the Territory's regulatory regime. While the Act clearly requires the Minister to review the Code by 30 June 2003, it does not appear to require the Code to be amended by this time, or for the nature of precise amendments to have been resolved. Indeed, the outcome of this Inquiry could be an agreed process for consulting on and resolving, those issues, which the current Inquiry is unable to consider fully.

### **1.2.1 Concerns about the Inquiry process**

Power and Water understood that there would be three stages to the Inquiry:

- a) The Regulator's Issues Paper would foreshadow and discuss substantive issues for the Inquiry, calling for public submissions on those issues;
- b) Drawing on the submissions received, the Regulator would set out in a Draft Report for public consultation, his views and recommendations;
- c) Following a period of public consultation, the Report would be finalised by the Regulator and provided to the Minister.

Power and Water responded on the due date to all of the 42 issues raised by the Regulator in the Issues Paper.

The Draft Report was released to Power and Water on 19 March 2003, calling for responses within 14 days, by 2 April 2003. The Draft Report indicated that:

*“unless matters are raised in submissions that the Commission subsequently accepts warrant changing its conclusions and recommendations as stated in this Draft Report, those conclusions and recommendations will form the basis of the Commission's final report”.*

However, the Draft Report included “surprises” in the form of over thirty recommendations on matters that had not been foreshadowed in the Issues Paper or elsewhere. Moreover, these recommendations are fundamental to the Code and the Network Access regime. They contemplate:

- significant changes in Power and Water’s regulatory and legislative responsibilities;
- removing indemnities;
- changes in structures for licensing; and
- significantly increasing the scope of Regulator’s powers to intervene in Power and Water’s competitive as well as its monopoly business interests.

Power and Water has struggled to pass comment on the majority of these new recommendations within the time allowed. Many of the proposals are complex, wide ranging and/or of fundamental importance to the conduct of the Inquiry. They require research, careful consideration and in many cases, legal advice. It is simply not realistic to expect a well thought through response from Power and Water or indeed any stakeholder, in the 14 days allowed for responses to the Draft Report. A letter expressing Power and Water’s concerns in this regard has been arranged from the Chairman emphasising our concerns in relation to the number of important issues raised and the short timeframe in which to respond.

## **1.2.2 Substantive Comments on the Draft Report**

Power and Water’s detailed comments are attached to this submission. In summary, Power and Water finds the following major issues within the draft report:

- The Regulator has dismissed calls for an appeals provision, out of hand. This is despite both calls by the Productivity Commission for appeal processes to be introduced and principles promoted in Best Practice Utility Regulation by the Utility Regulators’ Forum. Aside from concerns about the protections afforded to stakeholders in the regulatory process, there is a significant risk that this and other proposals will create a perception of a conflict of interest as the Inquiry is being conducted by the Regulator. Power and Water is concerned that many of the recommendations prioritise protection afforded to the Regulator above the workability of the Code;
- Many of the recommendations are for changes to the *Electricity Reform (Access) Act*, not the Code. Neither the terms of reference for the Inquiry nor the Issues Paper anticipated consideration of specific legislative amendments. Nonetheless, Power and Water has sought to provide provisional views on these new issues;

- The Regulator has included some wide ranging and non-specific recommendations in the Report. In particular, recommendations 43, 44, 48 and 53 seek to ‘address the anomalies found by the Commission’s legal advisers’. These anomalies include several amendment initiatives expected to have implications for Power and Water, but contain little in the way of detail. Power and Water would like adequate consultation on these issues. Accordingly, all of these recommendations have been rejected simply on the grounds that the Issues Report provides insufficient information about the Inquiry’s proposals to allow it (or indeed any other stakeholder) to form a view on their merits in the attached submission.

Power and Water agrees that several matters require further consideration, often where insufficient detail has been provided in the Draft Report to allow Power and Water or any other stakeholder, to form a view – but Power and Water strongly emphasises that this agreement does not in any way support their resolution without further consultation.

## **2 Specific Responses to Recommendations**

### **2.1 Recommendation 9**

*The review and appeal provisions of the Act should be retained in their present form.*

Power and Water does not support this recommendation.

In its submission to the Issues Paper, Power and Water noted that there is a clear need for a review and appeals mechanism in the Code. This view was not supported by the Regulator, on the basis that deliberations between draft and final regulatory decisions ensure sufficient impetus for examination of important issues.

Power and Water does not agree with this assessment by the Regulator. This is because a review mechanism assists not only investor confidence in a regulatory regime, but also the integrity of decisions by ensuring regulatory accountability. This view is consistent with the recent Productivity Commission Report into the National Access Regime ('the PC Review').

Power and Water believes that review mechanisms increase investor confidence, through lessening perceptions of possible regulatory risk. This is because regulation involves implementation of instruments with a range of possible interpretations, with each interpretation of material financial effect for investors in regulated utilities. Investors have little choice but to factor in the risk of disadvantageous regulatory decisions in deciding whether to invest in either assets or systems.

Regulatory risk is accepted in economic literature. Ergas et al<sup>1</sup> noted, in describing regulatory risk, that "*if a regulator is required by law to follow an exact and complete set of rules when making decisions, non-market risk would be eliminated. This is generally not feasible*". Simply, where interpretive regulatory decisions have potential to impact on real investment, regulatory risk exists.

Regulatory risk is therefore mitigated through reducing the possibility of interpretative error. Review procedures lessen interpretive error by ensuring that decisions are tailored towards meeting the objectives set under the regulatory instrument, and provide necessary quality assurance of decision making processes.

There are negative impacts in avoiding review or appeal procedures. National Economic Research Associates noted<sup>2</sup> in their submission to the PC Review that "*a regulatory regime that lacks a clear path of reliable appeal to an independent judiciary will fail to gain investor trust*". There is a link between the integrity of a regulatory system, and the level of regulatory risk inherent in that system, with the willingness of investors to provide capital.

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<sup>1</sup> Ergas et al "Regulatory Risk – draft version", ACCC Regulation and Investment Conference, March 2001, section 3.2.4

<sup>2</sup> NERA submission to PC review, 2001, page 9)

Most importantly, however, review mechanisms provide Regulator's with an ongoing check on the effectiveness of the regime. In its submission to the PC Review, the National Competition Council<sup>3</sup> noted the importance of such mechanisms:

*Another important dimension of effective access regulation is the availability of effective review mechanisms to test the efficacy of decisions by regulatory institutions. Effective review mechanisms help to ensure that access regulation meets its identified objectives. Through, in particular, enforcing process requirements and ensuring appropriate use of regulator discretion.*

Further, the Utility Regulators' Forum in 1999<sup>4</sup> noted that:

*Accountability involves regulators taking responsibility for their regulatory actions. This requires regulators to establish clearly defined decision-making processes and provide reasons for decisions. Supporting the decision-making processes should be effective appeal mechanisms and adherence to principles of natural justice and procedural fairness.*

The need for an appeals mechanism is supported by Power and Water, by the PC Review, and by other Regulatory bodies. This supports a more extensive review of the need for an appeals mechanism in the Northern Territory than provided by the Regulator.

## **2.2 Recommendations 10 and 11**

*Ministerial discretion in determining the Code's coverage of networks should remain.*

*Consideration should be given to including in section 5 of the Act the criteria that the Minister is to take into account in determining which networks are to be covered by the Code.*

Power and Water supports the thrust of Recommendations 10 and 11, and looks forward to involvement in consultation on the development of criteria to guide the Minister.

Power and Water accepts that public policy decisions will always contain a level of discretion. It is suggested that, in forming the framework, the potential scope of discretion is balanced carefully against requirements for regulatory certainty.

Power and Water would support something akin to the National Gas Code, which sets out a clear and transparent test for coverage, assessed by an independent body (the National Competition Council) and including a right of appeal to the Australian Competition Tribunal.

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<sup>3</sup> NERA submission to PC review, sub 43, page 69

<sup>4</sup> Best Practice Utility Regulation, Utilities Regulators Forum, page 8

## **2.3 Recommendation 12**

***Section 11(1) of the Act should be amended to be consistent with section 8 of the Utilities Commission Act.***

Power and Water neither supports nor opposes this recommendation. Power and Water supports the concept of an independent regulator.

To this end, legislative changes may be necessary to provide certainty to the Regulator and Government that this is the case. Power and Water has not sought advice on whether the Regulator's proposed amendments to the Act provide such certainty.

## **2.4 Recommendation 13**

***Section 26 of the Act should be amended to provide that no liability attaches to the regulator in relation to any act or omission under the Code, consistent with provisions in the Utilities Commission Act and the Electricity Reform Act.***

This recommendation is not supported.

Power and Water agrees with the Commission that such an indemnity provision is apparently absent from the Act. Power and Water is of the view, however, that the proposed amendment to the Act is neither necessary nor desirable.

It is unnecessary because Section 41 of the *Utilities Commission Act* as drafted seems to sufficiently indemnify the Regulator.

It is not desirable because the amendment appears to go further than the current provisions of the *Utilities Commission Act* and *Electricity Reform Act* by indemnifying the Regulator even where acts or omissions have occurred in bad faith. This does not appear to be consistent with interstate provisions which, Power and Water's initial review indicates, indemnify Regulators only for acts or omissions made in 'good faith'.

Secondly, the Draft Report does not support appeal or review processes in Regulatory Decisions. Together with this recommendation, the NT market would be characterised by a 'one person regulator', limited rights for shareholders to appeal judgements, and no liability or accountability attaching to the regulator for inappropriate judgements. These provisions would not be conducive to new network investment or encouraging new entrants.

It is difficult to see how encouraging this form of regulatory structure is in line with the objectives of the Code review process.

## 2.5 Recommendation 14

***Section 26(2) of the Act should be amended to only operate to limit the network provider's liability to the maximum extent permitted under the Trade Practices Act.***

This amendment is unnecessary. It is clear that the Territory Legislative Assembly, as a subordinate legislature to the Commonwealth, has no legislative power to pass laws inconsistent with Commonwealth laws<sup>5</sup>.

Therefore, any limitation of liability in a Northern Territory statute such as that contained in section 26 of the *Electricity Networks (Third Party Access) Act* must be subject to the *Trade Practices Act* in any event.

## 2.6 Recommendation 15

***Section 26(2) of the Act should be amended to ensure that the network provider's immunity from liability does not exclude the rights of redress that a party to an access agreement would usually have against the network provider for a breach of any access agreement.***

Power and Water can neither support nor oppose this recommendation as insufficient information has been provided in order to form a view.

Section 26(2) is not limited in its terms to the relationship between the network provider and the other party to an access agreement. Given that the network provider does not have any contractual relationship with end use customers, it is to be expected that the limitation of liability in section 26(2) should govern and limit the network provider's liability to end use customers of electricity.

Power and Water is concerned that, if specific reference is made in section 26(2) to the rights of redress a party to an access agreement has under an access agreement, this may support an argument that section 26(2) is only intended to limit the liability of a network provider to the other party to an access agreement.

Accordingly, if section 26(2) is to be amended to make specific reference to the preservation of a party's rights under an access agreement, Power and Water asks that, at the same time, the section should also be amended to make it clear that section 26(2) also extends to limit a network provider's liability to third parties such as end use customers. This could be done by the insertion of the words "to a Code participant or any third party" into section 26(2) after the opening words "No liability".

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<sup>5</sup> See Lockhart J in *Attorney-General (NT) v Minister for Aboriginal Affairs* (1989) 90 ALR 59; Dixon J in *Federal Capital Commission v. Laristan Building and Investment Co Pty Ltd* (1929) 42 CLR 582 at 588; Brennan J in *Webster v McIntosh* (1980) 32 ALR 603 at 605-6; and in *R v Kearney; ex parte Japanangka* (1984) 158 CLR 395 at 417-9. See also *Pritchard v. Racecage Pty Ltd* (1997) 142 ALR 527 per Branson J.

As to the substance of the recommended amendment, Power and Water has not had sufficient opportunity to either consider the merits of the arguments advanced by the Commission in its draft report, or any available arguments in response. Power and Water suggests that, as the Commission has recommended in relation to the proposal to cap liability under section 26, this proposed amendment be the subject of further consideration and consultation.

If the amendment is to proceed, Power and Water suggest that it be couched in terms similar to those used in section 107(3) of the *Electricity Reform Act*, but substituting "access agreement" for "agreement" where it first appears, and deleting the words "with a person". Power and Water would also like the opportunity to review the wording of any amendment proposed to give effect to this recommendation.

## **2.7 Recommendation 16**

*Section 26(1) of the Act should be amended to provide that no liability attaches to a person in relation to any 'system control' type of act or omission under the Code.*

Power and Water has no objection to the amendment proposed, however, would like the opportunity to review the proposed wording of any amendment to section 26(1).

## **2.8 Recommendation 17**

*Further consideration should be given to amending sections 26(1) and 26(2) of the Act with a view to capping, rather than excluding, the system controller's and network provider's liability for acts or omissions under the Code, consistent with recent amendments to the National Electricity Law.*

Power and Water has not had sufficient opportunity to consider this recommendation and notes that the capping of liability provided for under section 77A of the *National Electricity Law* was agreed to after "a lengthy review process". Power and Water also notes the terms of recommendation 17 and paragraph 2.16 of the Draft Report to the effect that, before amendments of this type are implemented, further consideration including consultation with interested parties, should be undertaken. Power and Water agrees that a review process should be undertaken which provides Power and Water with a reasonable opportunity to consider:

- the merits of, and make submissions in relation to, any recommendation of this type; and
- the ramifications or any amendment of this type on Power and Water's business, and the increased risks and exposure associated with the amendment.

## **2.9 Recommendation 18**

***Clause 6A(2) of the Code should be amended to include a reference to such other information as the regulator requires from time to time.***

Power and Water does not support this recommendation. This is because it appears that the thrust of the Regulator's recommendation is to amend clause 6A(2) of the Code in a way that allows the Regulator the power to prescribe and control the information provided by the network provider to access seekers.

This is a significant move from the current provisions in the Code, which currently allow the network provider to determine information to be included in the package of information to be provided to access seekers.

Power and Water, as network provider, and access seekers engage in commercial negotiations in relation to the terms of access to Power and Water's networks. While those negotiations occur against a background of regulation, they have in the past been commercial in nature and have produced commercially acceptable outcome. This recommendation is therefore reasonably heavy handed and invasive in that it aims to resolve a theoretical rather than actual problem through increased regulation.

## **2.10 Recommendation 19**

***Clause 8 of the Code should be amended to clearly state that the power to require information under this clause is in addition to the general information gathering power conferred upon the regulator under section 25 of the Utilities Commission Act.***

Notwithstanding Power and Water's opposition to the Regulator's recommendation 18, if it was adopted, this may be a necessary consequential amendment.

## **2.11 Recommendation 20**

***The Code should be amended to provide for the regulator's approval of a default use-of-system agreement and a demand connection agreement.***

Power and Water does not support this recommendation.

The Draft Report notes that it is not possible for the Regulator to interfere in internal arrangements between Power and Water's business units. In response, the Regulator has recommended that the Code be amended to require Power and Water to lodge approved default use of system and connection agreements. Presumably Power and Water would be required to enter into these default agreements with any new market entrant.

Apart from being an unnecessary intrusion into Power and Water's operations, the idea is both unworkable and expensive.

It is unworkable because each agreement for each party at each location will be different in the prices and terms/conditions offered. Conditions such as prices will be negotiated commercially depending on each entity's needs and offering. Given the possibility for the default agreement to act as a 'backstop' for failed negotiations with an access seeker, the agreements would need to be drafted to reflect a number of possibilities. This would be counterproductive and would result in significant legal and interpretive effort.

Neither Power and Water nor a new entrant would commit to a default agreement because that agreement would not represent the actual situations of either party.

It is expensive because regulators are not able to pass a view on much of the commercial content of use of system or connection agreements without significant use of consulting engineers and advisors. The Regulator's approval of commercial conditions such as terms and conditions of access to land and buildings, frequency of payment intervals, dispute mechanisms, and definitions sections, for example, would inappropriately extend regulation into competitive business activities.

## **2.12 Recommendations 21, 22 and 23**

*Clause 9 of the Code should be amended to provide for a general approval power, and a derogation or exemption power in favour of the regulator, in relation to the network technical code and the network planning criteria.*

*Clause 9(5) of the Code should be amended to make it clear that the regulator's approval power under clause 9(4) extends to subsequent amendments proposed by the network provider.*

*Clause 9 of the Code should be amended to confer a power on the regulator to initiate amendments to the network technical code and network planning criteria, including in response to suggestions by other Code participants.*

Power and Water does not support these recommendations.

The proposal that the Regulator have a substantial role in determining network technical and planning issues, rather than continuing its current role, involves more regulatory involvement in technical issues than seems either efficient or practical. The Code is structured to give the network provider responsibility for developing and implementing a network technical code and network planning criteria subject to consultation with the Regulator. Changes to the network technical code or planning criteria are subject to a consultation process.

## **2.13 Recommendation 24**

*A provision should be added to clause 9A of the Code recognising that any system for establishing a maximum price must also include a mechanism for defining the minimum service which must be provided in return for the payment of the maximum price.*

Power and Water cannot support this recommendation until it has reviewed the form of any proposed mechanisms. Broadly, Power and Water encourages the development of a regulatory regime that provides appropriate incentives to improve services, and is willing to discuss with the Regulator issues such as price versus service trade-offs.

## **2.14 Recommendation 25**

*Clause 11(2)(a) of the Code should be amended to allow an access seeker to seek the regulator's adjudication of what constitutes a reasonable timeframe for the making of the preliminary assessment, where the access seeker feels that the network provider's proposed timeframe is too long.*

Power and Water do not support this recommendation. As access applicants have redress to the Regulator via clause 13 should they have concerns in relation to the access application, it would appear unnecessary to amend 11(2)(a).

## **2.15 Recommendation 29 and 30**

*Further consideration should be given to whether the contractual framework to apply between the generator and the network provider and between the retailer, end-use customer and network provider under the Code should be in the form of the 'straightline' arrangement as applying in New South Wales and Victoria or the 'triangular' arrangement as in South Australia.*

*The Code should be amended to remove references to the possibility that no generators may contract for the direct delivery of electricity to end-use customers.*

Power and Water supports further consideration being given to this issue.

This recommendation raises a number of fundamental issues about the regulatory structure in place in the Northern Territory electricity market.

The issues surrounding the adoption of a triangular or linear model are complex and cannot be adequately dealt with in the timeframes allowed in this review. Power and Water understand that these issues have been subject to detailed consideration in a number of other jurisdictions.

The decision on which option is best for the Northern Territory will require consideration and consultation in relation to the unique features of the Northern Territory electricity industry.

## **2.16 Recommendation 31**

*Clause 3 of the Code should be amended to ensure appropriate definitions are included for 'connection services', 'electricity network' and a 'consumer of electricity'.*

Power and Water does not oppose modifying definitions where necessary to clarify the regime, however Power and Water would expect to receive an opportunity to comment on detailed proposed amendments to the Code before changes are implemented.

## **2.17 Recommendation 33**

*Clause 38(2) of the Code should be amended to refer not only to the applicant, but also respondents.*

Power and Water supports this recommendation.

It would appear that clause 38(2) of the Code was drafted on the assumption that the access applicant is the only party who might initiate an access dispute. The term 'applicant' as used in 38(2) may cause some confusion, as it would appear to refer to the access applicant, rather than the party who has referred the dispute to the Regulator.

## **2.18 Recommendation 34**

*Clause 42(2) of the Code should be amended to remove reference to expansions of the electricity network in the definition of 'extension of an electricity network'.*

This recommendation is supported, subject to the following: Power and Water assumes recommendation 34 refer to clause 42(1), as clause 42(2) does not refer to expansion. Power and Water agrees that clause 42(1) should only refer to 'extension', a term defined in clause 3 of the Code.

## **2.19 Recommendation 35**

*Clause 42(2) of the Code should be amended to ensure that an arbitrator will determine the economic feasibility of an extension of an electricity network in a manner that accords with the procedure applied by the regulator under chapter 8 of the Code.*

Power and Water supports this recommendation, on the basis that it adds both clarity and consistency to the assessment of network extensions under the Code. Power and Water proposes that the amendment go further to specifically bind the arbitrator to Chapter 8 principles.

## **2.20 Recommendation 36**

*Clause 52(1) and 52(6) of the Code should be reconciled in order to ensure that an award which overrides an earlier award or access agreement with another party is clearly binding on that other party.*

Power and Water do not support this recommendation.

On preliminary review, it appears that clauses 52(1) and 52(6) are consistent<sup>6</sup>. Clause 52(1) refers to an award on access made to the access applicant. Presumably the dispute could only arise between an applicant and the network provider. Clause 52(6) notes that the award takes effect as a contract between the access applicant (now called the network user) and the network provider.

Clause 52(3)(e) does not alter this position. There is no need to assume, as the Draft Report does, that the earlier award or access contract would be with another network user. If necessary, clause 40 would allow another network user to be a party to the arbitration, which would mean that clause 56(1) would be effective.

## **2.21 Recommendation 38**

*The Act should be amended to allow, in certain circumstances, a direct right to claim compensation for a contravention of the Code, consistent with provisions of the National Gas Code.*

Power and Water has not had sufficient opportunity to consider this recommendation. In order to come to a considered conclusion, and to make considered submissions in relation to it, Power and Water needs to:

- research the background to section 36 of the *Gas Pipelines Access Law*;
- research the position in respect of electricity in other jurisdictions, and come to an understanding of why that position was adopted; and

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<sup>6</sup> Power and Water note that the Draft Report references clause 52(2)(e) which appears to be incorrect in considering this issue. It is suggested that this should be clause 52(3)(e).

- consider whether there are any other factors which would justify a different position in respect of the Territory electricity network to that existing under the *Gas Pipeline Access Law*.

It is also difficult to provide any meaningful submission without knowing the circumstances in which the Commission considers the right to compensation should apply.

Power and Water suggests that, like recommendation 17 and the other recommendations discussed at paragraph 2.16 of the Draft Report, this recommendation be the subject of further consideration and consultation with Power and Water.

## **2.22 Recommendation 39**

*Clause 7A of the Code should be revised to remove any anomalies with the Regulation under the Utilities Commission Act which authorises the Electricity Ring Fencing Code.*

Power and Water supports this recommendation as it would rectify an ambiguity in the Code.

## **2.23 Recommendation 40**

*Further consideration should be given to the arrangement applying in clause 18 of the Code for assigning available network capacity between competing access applications.*

Power and Water supports further consideration of this issue.

Power and Water considers that the existing clause 18 provides a sound and practical approach to allocating capacity for the following reasons:

- Available capacity (whether relating to Generator access or access to network capacity) should be provided to the applicant who has applied first. As noted below, there is precedent for this treatment elsewhere in Australia.
- It seems unlikely that more than one application will be made for spare capacity at a particular point in time in the Territory market.

*Principle of First Contract – Generator Access*

The Draft Report acknowledges that the National Electricity Market (NEM) deals with generator's access through managing constraints and dispatching generators in accordance with their bid price.<sup>7</sup> This gives rise to two situations:

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<sup>7</sup> Access Code Enquiry: Draft Report – paragraph 6.114 (page 53)

- where a lower bidding generator is despatched and takes all available capacity in the network, the customers have received the best price with regard to energy in that situation;
- where a generator who is constrained-off bids lower than another generator in the market, it could be argued that there is an impetus for investment to improve the network or remove constraints.

Where such investment to improve the network does not occur, it could be argued that market failure has occurred and thus there is a need for additional regulation. Power and Water believe that this has never occurred in the Northern Territory market, nor does it appear likely in the foreseeable future.

Generally, connection point capacity is not difficult to manage. Clause 18 provides a framework for the first applicant to receive access to the available connection point. When the next applicant applies for access at the same connection point, negotiations for access should occur on new terms reflecting the currently available capacity. Where there is insufficient capacity, some augmentation may be required at a cost to the customer depending on the customer contribution policy of the regime.

For a network provider to restrict access, or the form of access, provided to applicants to the benefit of future (possible) applicants is neither efficient nor practical. Possible implications could include overbuilding network connections as access seekers doubt the integrity of their own rights.

#### *Access to Network Capacity*

In respect to system capacity<sup>8</sup>, the Draft Report acknowledges that the applicant will assume that there is sufficient capacity within the system to handle the loads that develop from the access application. Any future capacity limitations would be dealt with in the system planning process and form part of the capital expenditure forecasts submitted in the revenue reset application of the network business. Power and Water expects that removing capacity constraints would offer reasonable support to a capital expenditure forecast submitted to a regulator for subsequent approval. This support may be provided by:

- General system capacity, as required to handle the loads demanded of the system whilst maintaining a safe and secure system; and
- Market benefits which relate to the removal of constraints in order to be able to despatch generators in accordance with the lowest bids.

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<sup>8</sup> System capacity is not specific to a connection point or load area, and relates to the network backbone that can be used to manage load flows across the region.

However, the line drawn between connection point, network extension, and deep system augmentation may be blurred. In South Australia, there is currently a provision within the SA Distribution Code<sup>9</sup> for customer contributions to some of this demand driven system capacity. This is prescribed in the Augmentation Provisions in Chapter 3 of that code. Customer contributions for augmentation of the network may be required where the new load is quite large in comparison to the existing network loads in the region. It should be noted that this part of the SA Distribution code is currently under review by the Essential Services Commission of South Australia (ESCOSA).

In clause 18(2), the Code attempts to remove the capacity associated with contestable loads and apply these to end user customers rather than network users. This allows for the loads, and therefore the capacity requirements to transfer between users when contestable customers transfer, removing any problems associated with network users (retailers) requiring access to network capacity that they no longer need to service customers that have transferred to another network user. This appears to be a practical solution to the issue of contestable loads transferring between retailers.

#### *Materiality – Cost of Developing a Provision*

This issue is a complex issue which gives rise to a number of steps required to address it. Power and Water note also that it is presently rooted in theory rather than practice in the Northern Territory. To this end, Power and Water encourages the Regulator to focus more on the flexibility provided by the existing system, rather than the medium term need for a new provision to replace it.

It is noted, however, that Power and Water's rights are impacted by the proposed amendment. To this end, Power and Water request close involvement in any subsequent process to ensure that it is workable.

## **2.24 Recommendation 41**

***Further consideration should be given to clarifying the rights of network users under existing access agreements as currently defined in chapter 2 of the Code.***

Power and Water supports the recommendation for further consideration of this issue

This recommendation foreshadows a review of the Code to provide unspecified changes. Power and Water await this review process with interest, and look forward to contributing to the final form and intent of any Code changes.

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<sup>9</sup> Distribution Code – ESCOSA web site, [http://www.escosa.sa.gov.au/resources/documents/021217-D-ESCOSAElecDistributionCode\\_Final.pdf](http://www.escosa.sa.gov.au/resources/documents/021217-D-ESCOSAElecDistributionCode_Final.pdf)

## **2.25 Recommendation 42**

*Clause 19(3) of the Code should be amended to provide for the regulator to have a role in establishing the circumstances in which a financial guarantee should be applied (and the terms relating to the provision of that financial guarantee).*

Power and Water does not support this recommendation for two reasons:

- Financial guarantees exist to protect the network provider from actions taken by connecting parties including refusal to pay for damage to equipment which are in contravention of either use-of-system or connection agreements. It is a matter of logic that one part of Power and Water should not need to offer securities to another part of Power and Water to protect against such events. Payment disputes generally only occur between companies, not within them;
- Competitive neutrality refers to the removal of any advantage held by a Government owned entity that arises from its Government ownership. If Power and Water does not require financial guarantees from its related parts, it is because they form part of the same entity and are therefore considered to be at lower risk of default. This would occur in the case of private ownership.

In any event, competitive neutrality has already been addressed through the legislative review program. Power and Water welcomes a third party review of the Code against competitive neutrality provisions.

## **2.26 Recommendation 43**

*Clause 3 (and associated clauses) of the Code should be amended to address the definitional anomalies identified by the Commission's legal advisers.*

Power and Water neither supports nor opposes this recommendation, as the Regulator has provided insufficient information on which to form a view.

The Regulator has not proposed a specific recommendation for changes to the Code in recommendation 43, rather contributors are asked to comment on a general intention without seeing the final form of proposed amendments. Power and Water submits that these changes, as with others discussed in this submission, should be the subject of more specific consultation.

In relation to the headings provided in the draft report, Power and Water notes the following.

- *Definitions section in the Act* – Power and Water has no objections to the drafting of a definitions section, however note that wide consultation on the workability and impact of new or amended definitions will be required;
- *All definitions should appear in the same place* – Power and Water has no objection;

- *Access to services, not networks* – Power and Water supports this amendment, subject to consultation on the final form of the changes;
- *Definitions should be consistently applied* - Power and Water supports this amendment, subject to consultation on the final form of the changes;
- *Incorrect definitions used in clause 10(3)* - Power and Water supports this amendment, subject to consultation on the final form of the changes;
- *Schedule 2 issues* – Power and Water has no objection to this amendment.

## **2.27 Recommendation 44**

*Part 2 of the Code should be amended to address the drafting anomalies identified by the Commission's legal advisers.*

### *Paragraph 6.146 - clause 11(1)*

Power and Water do not agree to this proposed amendment.

Clause 11(1) is not concerned with the nature of the access applicant. It applies no matter who the access applicant is. Rather, it focuses on whether access is being sought in respect of a new or an existing end use customer, as this will determine to some degree how complicated the application is, and therefore how much time the network provider requires to respond to the application. The nature of the access applicant is irrelevant to this.

### *Paragraph 6.147 - clause 14*

Power and Water has no objection to all parties to the access application process being under an obligation to use reasonable endeavours to ensure that information provided to other parties during the process is accurate and complete.

However:

- the network provider already has obligations in respect of the accuracy and completeness of information provided to access applicants - these are contained in clause 6A of the Code; and
- clause 14 is directed to the accuracy of only the access application and information provided with that application.

Power and Water queries what information the obligation under clause 14 on network providers and respondents will apply to - this will need to be made clear in any amending provision.

***Paragraph 6.148 - clause 16(1)***

The 30 days should run from the later of:

- provision of an initial response by the network provider under clause 11; and
- provision of the preliminary assessment (if any) under clause 15.

***Paragraph 6.149 - clause 16(2)***

Power and Water has not had sufficient time to consider this proposed amendment. This proposal also falls outside the scope of "drafting anomalies" as described in recommendation 44. Like recommendation 38, in order for Power and Water to provide meaningful submissions in relation to this recommendation, it will be necessary for Power and Water to:

- undertake considerable research into the position in other jurisdictions (both the examples mentioned i.e. the NEC and the Victorian regulatory arrangements, and in other jurisdictions);
- consider why that position was adopted in each of those jurisdictions; and
- consider whether the NEC or Victorian regulatory arrangements are suitable to the Territory market and conditions.

Power and Water suggests that, like recommendation 17 and the other recommendations discussed at paragraph 2.16 of the Draft Report, this recommendation should be the subject of further consideration and consultation with Power and Water.

***Paragraph 6.150 - clause 16(2)***

Clause 16(2) does not purport to be an exclusive list of matters to be included in an access offer. Rather, it sets the minimum standard.

In relation to any preliminary assessment, given that the assessment is preliminary in nature and therefore is necessarily subject to more detailed review and consideration, it would be inappropriate to include a requirement in clause 16(2) for the access offer to include the terms of any preliminary assessment.

Power and Water needs to see the proposed wording of the amendment before it can properly comment on it.

***Paragraph 6.151 - clause 16(2)***

Power and Water does not have any objection to these issues being clarified, but would like to have the opportunity to comment on the proposed wording of any amendments.

***Paragraph 6.152 - clause 16(3)***

Power and Water does not have any objection to these issues being clarified, but would like to have the opportunity to comment on the proposed wording of any amendments.

***Paragraph 6.153 - clause 19(3)***

It seems relatively clear from the terms of clause 19(3) that these conditions precedent do form part of any access agreement. However, Power and Water does not have any objection to the matter being clarified, but again, would like to have the opportunity to comment on the proposed wording of any amendments.

***Paragraph 6.154 - clause 20***

As clauses 20(2) and (3) apply generally to any "person", Power and Water assumes that the reference to clause 20 in the first sentence of paragraph 6.154 should be to clause 20(1). On that basis, Power and Water has no objection to the amendment, but would like to have the opportunity to comment on the proposed wording of any amendments.

As to clause 20(3) (we assume that the reference to clause 21(3) is intended to be to 20(3)), it is difficult to comment on the drafting anomaly identified without first seeing the proposed solution. As with many of these proposed amendments, Power and Water would like to have the opportunity to comment on the proposed wording of any amendments.

***Paragraph 6.155 - clause 22***

Without an explanation of the reasoning used to reach the conclusion that clause 22 will result in access seekers having to pay costs to Power and Water in excess of those incurred by it, it is impossible to respond to this assertion. Power and Water would like the opportunity to consider this reasoning, and the wording of the suggested changes, and make submissions in relation to them, before any amendments are made to the provision.

## **2.28 Recommendation 46**

***Clause 63 of the Code should be amended to include an additional paragraph referring to such other outcomes as the regulator determines are consistent with the general objects of the Code.***

Power and Water has no objection to this proposal. The objects clause relating to regulatory decisions should provide the necessary certainty for Power and Water's objectives to be achieved.

## **2.29 Recommendation 48**

*Chapter 5 of the Code should be amended to address the definitional anomalies identified by the Commission's legal advisers.*

Power and Water has no objection to a proposal to amend clause 60(1), to adopt the term 'regulated network access service' rather than the current 'regulated price'.

## **2.30 Recommendation 52**

*Consideration should be given to deleting – at the appropriate time – those sections of Part 3 that refer exclusively to the price control methodology to be used in the first regulatory period.*

Power and Water has no objections to this recommendation.

## **2.31 Recommendation 53**

*Clause 67(2) of the Code should be deleted to address the definitional anomalies identified by the Commission's legal advisers.*

The Regulator has recommended deleting section 67(2) of the Code. Power and Water has no objection to this proposal.

## **2.32 Recommendation 55**

*Clause 74 of the Code should be amended to provide that, in the event of any conflict with the clause 63 pricing principles, the clause 63 principles will prevail.*

Power and Water supports the amendment.

Power and Water previously noted that a conflict should not occur between the principles set out in Chapter 5, which sets out the objectives for all of Part 3 and section 74 which sets out the objectives for Chapter 7, which is itself a component of Part 3.

However, if a conflict did arise, complex interpretative work would be required to resolve which interpretation should be accepted. Given this, a simple change to clause 74 to establish a hierarchy appears pragmatic.

### **2.33 Recommendation 57**

*Chapter 7 of the Code should be amended to require that the network provider make arrangements with the retailer to include the network component of a contestable customer's bill in the statement of charges provided to each contestable customer.*

Power and Water support the principle underlying the recommendation that contestable customers have access to sufficient pricing information to enable informed decision making.

However, Power and Water can neither support nor oppose this recommendation, for two reasons:

- the Regulator has not proposed a specific recommendation for changes to the Code, rather Power and Water are asked to comment without seeing the final form of proposed amendments;
- Power and Water query whether the Code is the appropriate instrument to address the need for this amendment. The proposed amendment likely requires Power and Water Networks to become involved in commercial arrangements between retailers and customers which is not appropriate.

### **2.34 Recommendation 60**

*Chapter 8 of the Code should be amended where applicable to address the definitional and drafting anomalies identified by the Commission's legal advisers.*

Power and Water can neither support nor oppose this recommendation, as the Regulator has provided insufficient information on which to form a view.

The Regulator has not proposed a specific recommendation for changes to the Code in recommendation 60, rather Power and Water are asked to comment without seeing the final form of proposed amendments. This is particularly important with this recommendation, as the specific parts of the recommendation are not suitable to be grouped.

In relation to the specific changes noted in the Draft Report, Power and Water notes the following.

- Definition of Capital Contribution – Power and Water agrees there is some duplication in this definition, but would like the opportunity to review and comment upon the wording of any proposed amendment;
- Use of the term 'formal Access Agreement' – Power and Water supports the removal of this term and replacement with 'Access Agreement';
- Link between 31(1) and Chapter 8 of the Code – Power and Water considers that this amendment is unnecessary, on the basis that section 31(2) of the Code already provides such a link;

- Including in the Code a specific right for the Regulator to require amendments to the statement of principles and methods for establishing capital contributions – Power and Water does not support this amendment, on the basis of the rationale provided. Clause 81(1) allows the Regulator to oversee the principles for consistency with Chapter 8 of the Code. It is difficult to see why oversight would be required for any other purpose. In particular, the regulator's express role under clause 81(1) is to oversee the **broad** application of the capital contributions principles set out in Chapter 8. The regulator's limited power to disapprove the network provider's draft statement under clause 81(3) is consistent with this "light handed" approach. The proposed amendment is inconsistent with the regulator's broad, light-handed role under clause 81(1).
- Including in the Code a specific right for the Regulator to advise access seekers on application of principles and methods and any requirement to make capital contributions set out in an access offer – Power and Water does not support this amendment. Firstly, it is possible that the recommendation, depending on its practical implementation, would prejudice the Regulator's independence. This is because it appears the Regulator would be assisting one party against another party in the market, rather than implementing an impartial regime. Power and Water also query the Regulator's liability for advice provided to access seekers. Secondly, the Regulator's powers and obligations in relation to capital contributions are limited in the Code because Power and Water's operational flexibility is both necessary and desirable. Allowing flexibility for the Regulator to work with access seekers to establish the prices and conditions of access would take these powers further than is appropriate for an independent Regulator. Finally, the proposed expanded role of the Commission is inconsistent with the light handed, broad overseeing role of the regulator as set out in clause 81(1).
- Change to clause 79(5) of the Code. The Regulator submits that the current provision 'exposes third party network users to potentially onerous requirements without any form of redress and could potentially prevent a new retailer or generator entering the market', yet provides nothing to support these assertions, nor any suggestions for amendment. Power and Water does not support a change to this clause without first having access to the proposed amendment and the Regulator's assessment of the need for it. In any event, there are circumstances in which "potentially onerous" requirements are justified, such as where the financial position of the network user is weak. This is a part of everyday commercial life. It would be heavy handed regulation indeed if the regulator's role included one of regulating prudential requirements, and would amount to the regulator requiring the network provider to take prudential risks which it would not otherwise take, without the regulator taking responsibility for the consequences of those risks being realised. This is not the regulator's role.

Power and Water requests that these individual issues be treated as separate recommendations to the Minister. Power and Water submits that its views on each should be recorded independently.

## **2.35 Recommendation 62**

***The provision for the regulator's determination of the methodology for estimating network energy losses in clause 82(2A)(b) of the Code should be retained in its present form.***

Power and Water previously submitted that changes to the Code were necessary. The recommendation has not recognised Power and Water's concerns nor does the Draft Report consider the issues.

Power and Water has four concerns in relation to this recommendation.

Clause 82(2A) states:

*"The power system controller's assessment of the out-of-balance energy supplied or demanded by a generator must take full account of network energy losses where such energy losses are:*

*(a) estimated in accordance with Schedule 13; or*

*(b) as otherwise determined from time to time by the regulator."*

Firstly, Power and Water does not agree that the Regulator should require losses to be determined in any other manner than that laid down in Schedule 13. Provision of regulatory certainty is important to all market participants, and has in the past led to disagreement on which of the wide range of methods available for loss estimation should be used.

Secondly, Power and Water has advised the Regulator that the calculation of energy loss factors for each contestable customer, as required by Schedule 13, is impractical and in need of amendment. While the Regulator notes this issue in the Draft Report, the Regulator has not proposed consequential amendments. Power and Water again stresses the importance that this issue is taken into account, and for generic loss factors to be considered as a workable alternative.

Thirdly, Power and Water remains concerned that the loss factor calculation algorithm is in need of review.

Fourthly, Power and Water remains concerned about the use of the word 'measure' in relation to losses. Power and Water again stresses that the word 'measure' is not appropriate, as it is technically incorrect.

These four issues are material and Power and Water strongly requests that they be taken into account in this Code review process. It is important that the Code is technically valid and these changes are necessary to ensure this.

## A List of Supported and Unsupported Recommendations

<i>Number</i>	<i>Nature of Recommendation</i>	<i>Supported by Power and Water?</i>
1	The benefits possible warrant continuation of policy interventions aimed at facilitating third-party access to electricity networks, even in the Territory's circumstances.	Yes
2	The Code is the most appropriate of policy instruments available for promoting third-party access to electricity networks in the Territory. A switching to alternative policy instruments would only increase costs for market participants without guaranteeing improved outcomes.	Yes
3	The Code's general effectiveness can be improved by efforts to reduce associated administrative and compliance costs and to provide greater certainty to the network provider, wherever this can be achieved without unduly impacting on the public benefits possible from access regulation.	Yes
4	The Code's general effectiveness can be improved wherever possible by efforts to reduce uncertainties and impediments facing access seekers and network users, wherever this can be achieved without unduly impacting on the public costs associated with access regulation.	Yes
5	Provision should be made in the Act whereby interested parties can initiate consideration of amendments to the Code, consistent with the approach followed under the National Electricity Code.	Yes
6	A specific objects clause should be added to the Code, along the lines of the Commonwealth Government's proposed objects clause for Part IIIA of the Trade Practices Act.	Yes
7	Clause 2(2) of the Code should be amended by substituting the word 'must' in place of 'should' and by adding to the list of matters 'any other matters that the regulator considers are relevant', consistent with the wording in the National Gas Code.	Yes
8	Provision should be made in the Act for the regulator to be authorised to develop and publish 'guidelines' and 'directions' where the regulator can demonstrate (a) that this is necessary to eliminate any uncertainty that may arise regarding the conduct of Code participants that is consistent with the requirements of the Code, and (b) that there is a net public benefit in promulgating such guidelines or directions.	Yes
9	The review and appeal provisions of the Act should be retained in their present form	No
10	Ministerial discretion in determining the Code's coverage of networks should remain	Insufficient Information
11	Consideration should be given to including in section 5 of the Act the criteria that the Minister is to take into account in determining which networks are to be covered by the Code.	Yes

<i>Number</i>	<i>Nature of Recommendation</i>	<i>Supported by Power and Water?</i>
12	Section 11(1) of the Act should be amended to be consistent with section 8 of the Utilities Commission Act.	Insufficient Information
13	Section 26 of the Act should be amended to provide that no liability attaches to the regulator in relation to any act or omission under the Code, consistent with provisions in the Utilities Commission Act and the Electricity Reform Act.	No
14	Section 26(2) of the Act should be amended to only operate to limit the network provider's liability to the maximum extent permitted under the Trade Practices Act.	No
15	Section 26(2) of the Act should be amended to ensure that the network provider's immunity from liability does not exclude the rights of redress that a party to an access agreement would usually have against the network provider for a breach of any access agreement.	Insufficient Information
16	Section 26(1) of the Act should be amended to provide that no liability attaches to a person in relation to any 'system control' type of act or omission under the Code.	Yes
17	Further consideration should be given to amending sections 26(1) and 26(2) of the Act with a view to capping, rather than excluding, the system controller's and network provider's liability for acts or omissions under the Code, consistent with recent amendments to the National Electricity Law.	Insufficient Information
18	Clause 6A(2) of the Code should be amended to include a reference to such other information as the regulator requires from time to time.	No
19	Clause 8 of the Code should be amended to clearly state that the power to require information under this clause is in addition to the general information gathering power conferred upon the regulator under section 25 of the Utilities Commission Act.	Insufficient Information
20	The Code should be amended to provide for the regulator's approval of a default end-of-system agreement and a demand connection agreement.	No
21	Clause 9 of the Code should be amended to provide for a general approval power, and a derogation or exemption power in favour of the regulator, in relation to the network technical code and the network planning criteria.	No
22	Clause 9(5) of the Code should be amended to make it clear that the regulator's approval power under clause 9(4) extends to subsequent amendments proposed by the network provider.	No

<i>Number</i>	<i>Nature of Recommendation</i>	<i>Supported by Power and Water?</i>
23	Clause 9 of the Code should be amended to confer a power on the regulator to initiate amendments to the network technical code and network planning criteria, including in response to suggestions by other Code participants.	No
24	A provision should be added to clause 9A of the Code recognising that any system for establishing a maximum price must also include a mechanism for defining the minimum service which must be provided in return for the payment of the maximum price	Insufficient Information
25	Clause 11(2)(a) of the Code should be amended to allow an access seeker to seek the regulator's adjudication of what constitutes a reasonable timeframe for the making of the preliminary assessment, where the access seeker feels that the network provider's proposed timeframe is too long.	No
26	In time, amendments may be required to clause 18 of the Code and the load balancing arrangements if a significant new generator was to emerge in the near future.	Yes
27	The generation-related provisions of the Code should be retained in their present location.	Yes
28	Clause 3 of the Code should be amended to ensure that different categories of network users (such as generators, retailers and end-use customers, and generator and load users) are appropriately defined in clause 3 of the Code and are then subsequently used in the Code in a consistent and correct manner.	Yes
29	Further consideration should be given to whether the contractual framework to apply between the generator and the network provider and between the retailer, end-use customer and network provider under the Code should be in the form of the 'straight-line' arrangement as applying in New South Wales and Victoria or the 'triangular' arrangement as in South Australia.	Yes
30	The Code should be amended to remove references to the possibility that no generators may contract for the direct delivery of electricity to end-use customers.	Insufficient Information
31	Clause 3 of the Code should be amended to ensure appropriate definitions are included for 'connection services', 'electricity network' and a 'consumer of electricity'.	Yes
32	Clause 35 of the Code could be amended to allow any party to an access application to declare that a dispute exists by notifying the regulator (consistent with the process in the National Electricity Code).	Yes
33	Clause 38(2) of the Code should be amended to refer not only to the applicant, but also respondents.	Yes
34	Clause 42(2) of the Code should be amended to remove reference to expansions of the electricity network in the definition of 'extension of an electricity network'	Yes

<i>Number</i>	<i>Nature of Recommendation</i>	<i>Supported by Power and Water?</i>
35	Clause 42(2) of the Code should be amended to ensure that an arbitrator will determine the economic feasibility of an extension of an electricity network in a manner that accords with the procedure applied by the regulator under chapter 8 of the Code.	Yes
36	Clause 52(1) and 52(6) of the Code should be reconciled in order to ensure that an award, which overrides an earlier award or access agreement with another party, is clearly binding on that other party.	No
37	The enforcement provisions in section 19 of the Act should be retained in their present form.	Yes
38	The Act should be amended to allow, in certain circumstances, a direct right to claim compensation for a contravention of the Code, consistent with provisions of the National Gas Code.	Insufficient Information
39	Clause 7A of the Code should be revised to remove any anomalies with the Regulation under the Utilities Commission Act which authorises the Electricity Ring Fencing Code.	Yes
40	Further consideration should be given to the arrangement applying in clause 18 of the Code for assigning available network capacity between competing access applications.	Yes
41	Further consideration should be given to clarifying the rights of network users under existing access agreements as currently defined in chapter 2 of the Code.	Yes
42	Clause 19(3) of the Code should be amended to provide for the regulator to have a role in establishing the circumstances in which a financial guarantee should be applied (and the terms relating to the provision of that financial guarantee).	No
43	Clause 3 (and associated clauses) of the Code should be amended to address the definitional anomalies identified by the Commission's legal advisers.	Insufficient Information
44	Part 2 of the Code should be amended to address the drafting anomalies identified by the Commission's legal advisers.	Insufficient Information
45	The network price control framework provided for in Part 3 of the Code – involving an independent regulator – should be retained.	Yes
46	Clause 63 of the Code should be amended to include an additional paragraph referring to such other outcomes as the regulator determines are consistent with the general objects of the Code.	Yes

<i>Number</i>	<i>Nature of Recommendation</i>	<i>Supported by Power and Water?</i>
47	Clause 63 of the Code should be amended to explicitly include in the pricing principles that long-run costs of providing access should be taken into account, consistent with the Commonwealth Government's response to the Productivity Commission Review.	Yes
48	Chapter 5 of the Code should be amended to address the definitional anomalies identified by the Commission's legal advisers.	Yes
49	Clause 72(2)(b) of the Code should be amended to provide for a class of 'excluded services' that, because in the regulator's opinion such services are both not subject to effective competition and do not lend themselves to be regulated via the general price controls provided for in chapters 6 and 7 of the Code, are to be provided to network users on fair and reasonable terms as approved by the regulator.	Yes
50	The definition of 'regulatory control period' in clause 3 of the Code should be amended to remove any doubt that such periods in future are to be five years in length.	Yes
51	Part 3 of the Code (and associated Schedules) should be amended where applicable to remove any doubt that the price control methodology to be used in the second and subsequent regulatory periods is to be determined by the regulator, in consultation with interested parties, in accordance with generally accepted regulatory best practice current at the time.	Yes
52	Consideration should be given to deleting – at the appropriate time – those sections of Part 3 of the Code that refer exclusively to the price control methodology to be used in the first regulatory period.	Yes
53	Clause 67(2) of the Code should be deleted to address the definitional anomalies identified by the Commission's legal advisers.	Yes
54	The objectives of network pricing stated in clause 74 of the Code should be retained in their present form.	Yes
55	Clause 74 of the Code should be amended to provide that, in the event of any conflict with the clause 63 pricing principles, the clause 63 principles will prevail.	Yes
56	The network pricing structure provisions in clause 75 of the Code should be retained in their present form.	Yes
57	Chapter 7 of the Code should be amended to require that the network provider make arrangements with the retailer to include the network component of a contestable customer's bill in the statement of charges provided to each contestable customer.	Insufficient Information
58	The pricing principles statement provision in clause 78(1) of the Code should be retained in its present form.	Yes

<i>Number</i>	<i>Nature of Recommendation</i>	<i>Supported by Power and Water?</i>
59	The capital contributions provisions in chapter 8 of the Code should be retained in their present general form.	Yes
60	Chapter 8 of the Code should be amended where applicable to address the definitional and drafting anomalies identified by the Commission's legal advisers.	Insufficient Information
61	The out-of-balance energy charging provisions of chapter 9 of the Code should be retained in their present form.	Yes
62	The provision for the regulator's determination of the methodology for estimating network energy losses in clause 82(2A)(b) of the Code should be retained in its present form.	No