

2019 NORTHERN TERRITORY ELECTRICITY RING-FENCING CODE AND GUIDELINES REVIEW

ISSUES PAPER

May 2019

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Glossary

Act	<i>Utilities Commission Act</i>
AER	Australian Energy Regulator
AER Guideline	Ring-fencing Guideline Electricity Distribution Version 2, published by the Australian Energy Regulator in October 2017
CAM	Cost allocation method
Code	Northern Territory Electricity Ring-fencing Code which took effect on 1 January 2009
Commission	The Utilities Commission of the Northern Territory
Electricity supply industry	Means the industry involved in the generation, supply and sale of electricity or other operations of a kind prescribed by the Electricity Reform Regulations
Generator	A business (or a component of a business) which holds a licence authorising the generation of electricity, or whose application for such a licence is currently under consideration by the commission
Guidelines	Northern Territory Electricity Ring-fencing Guidelines which took effect 28 January 2009
Licence	Means a licence granted by the commission under the <i>Electricity Reform Act</i>
Market operator	The role fulfilled by the System Controller in accordance with Attachment 6 of the System Control Technical Code, which manages the wholesale exchange of electricity in the Interim Northern Territory Electricity Market
Minister	The Minister to whom the <i>Utilities Commission Act</i> is committed, currently the Treasurer
NT	Northern Territory
Prescribed Business	Has the same meaning as provided by the Northern Territory Electricity Ring-fencing Code and Guidelines
PWC	Power and Water Corporation, established under the <i>Power and Water Corporation Act</i>
Regulations	Utilities Commission Regulations
Regulator	The Utilities Commission of the Northern Territory as established by the <i>Utilities Commission Act</i>

Retailer	Means a business (or component of a business) which holds a licence authorising the selling of electricity to end users, or whose application for such licence is currently under consideration by the commission
System Controller	Means a person licenced under the <i>Electricity Reform Act</i> to exercise system control over a power system

INTRODUCTION

Purpose of the Review

The Utilities Commission (commission) is reviewing the Northern Territory Electricity Ring-fencing Code (the Code) and Guidelines to ensure their contents and operation are of continued relevance and effectiveness for the electricity supply industry in the Northern Territory.¹

The review will also assist the Northern Territory Government to deliver its initiative to establish a regulatory framework which supports its Renewable Energy and Electricity Market Reform Implementation Plan for 2018-2020.²

About the Utilities Commission

The commission is an independent statutory body established by the *Utilities Commission Act* with defined roles and functions for economic regulation in the electricity, water and sewerage industries and declared ports in the Northern Territory.³

The commission seeks to protect the long-term interests of consumers of services provided by regulated industries with respect to price, reliability and quality.

The commission aims to ensure consumer requirements are met by enhancing the economic efficiency of regulated industries through promoting competition, fair and efficient market conduct and effective independent regulation.

The commission has functions under various Acts (and associated regulations) including the *Utilities Commission Act*, *Electricity Reform Act*, *Water Supply and Sewerage Services Act* and the *Ports Management Act*.

Submissions

This Issues Paper identifies topics to be considered as part of the review of the Code and Guidelines and invites submissions from all stakeholders. All interested parties are invited to make submissions on the Issues Paper, or any other issue relevant to the review by **28 June 2019**.

In the interest of transparency, the commission strongly encourages all stakeholders to make their submissions publicly available, and to keep any confidential information to a minimum.

¹ Section 24(9) of the *Utilities Commission Act*.

² Page 3, initiative 4, action j.

³ Regulated industries for the purpose of the *Utilities Commission Act* are declared by section 13 of the *Electricity Reform Act*, section 7(1) and (2) of the *Water Supply and Sewerage Services Act* and section 119(1) of the *Ports Management Act*.

Confidential information may include:

- information that could affect the competitive position of an entity or other person or
- information that is commercially sensitive for some other reason.

Submissions must clearly specify the document (or part of it) that contains confidential information. A version of the submission suitable for publication (that is, with any confidential information removed) should also be submitted.

To facilitate publication, submissions should be provided electronically by email to utilities.commission@nt.gov.au in Adobe Acrobat or Microsoft Word format.

Any questions regarding this Issues Paper or the review should be directed to the Utilities Commission by telephone (08) 8999 5480 or email utilities.commission@nt.gov.au.

Timetable

The review of the Code and Guidelines is to be completed by the end of 2019. The essential dates for the review are as follows:

Stage	Time
Issues Paper released	May 2019
Public consultation	May - June 2019
Draft version of updated NT Electricity Ring-fencing Code released	October 2019
Public consultation	October - November 2019
Final version of updated NT Electricity Ring-fencing Code released	December 2019

Following approval by the commission, the revised Code will be available on the commission's website www.utilicom.nt.gov.au.

ABOUT THE REVIEW

Background

The commission is reviewing the Code and Guidelines to ensure their contents and operation are of continued relevance and effectiveness for the electricity supply industry in the Northern Territory.⁴

When the Code was first introduced in 2001, Power Water Corporation (PWC) (formerly the Power and Water Authority) was the single provider of all electricity supply services, including generation, networks/distribution and retail. Since the last review of the Code in 2008, there have been a number of developments in the electricity supply industry that directly impact the Code, including:

- commencement of full retail contestability
- structural separation of PWC into three separate government-owned corporations
- establishment of an interim wholesale market (I-NTEM) in the Darwin-Katherine regulated network, including a market operator role within PWC System Control
- commencement of the *National Electricity (Northern Territory) (National Uniform Legislation) Act* and transfer of administration of network price regulation to the Australian Energy Regulator (AER)
- progressive adoption of the National Electricity Rules, as modified for the Northern Territory
- recent introduction of a national approach to ring-fencing with the release of the AER's Ring-fencing Guideline for Electricity Distribution (to commence in the NT 1 July 2019, with derogations)
- the current Government's commitment to renewable energy and electricity market reform in the Northern Territory.

Whilst there have been many changes since the Code was first introduced, the current situation is that the majority of electricity supply services are provided by the three government-owned corporations (PWC, Jacana Energy and Territory Generation).

Some private retailers and generators are licenced to operate in the Territory, however there is still very limited competition in the Northern Territory. These private businesses are competing against the government-owned corporations that possess a substantial degree of market power. Accordingly, it may be appropriate for ring-fencing mechanisms to be in place to safeguard the market and protect consumers.

⁴ Section 24(9) of the *Utilities Commission Act*.

Legislative requirements and review process

In the Northern Territory, the commission is authorised to make codes or rules (including varying or revoking codes) regarding ring-fencing in the electricity supply industry.⁵ Regulation 2 of the Utilities Commission Regulations defines ring-fencing as *the separate operation of related or associated businesses of a licensed entity in a regulated industry*. Section 13 of the *Electricity Reform Act* deems the electricity supply industry to be a regulated industry.

Clause 1.6 of the Code authorises the commission to publish guidelines relating to the application or interpretation of, or matters arising under the Code. In addition, section 7 of the *Utilities Commission Act* allows the commission to issue guidelines relating to the performance of its functions. In 2009, the commission released Ring-fencing Guidelines, which set out the commission's views relating to the application or interpretation of, matters arising under Code.

In accordance with section 24(4) of the *Utilities Commission Act*, the commission will consult with the responsible Minister, representative bodies and industry participants before varying the current Code. The responsible Minister is the Treasurer.

Through this Issues Paper, and as required under clause 6.1(a) of the Code, the commission seeks to engage the public and stakeholders to advise them that the commission is considering varying the Code and Guidelines and to invite submissions on any issues that should be considered as part of the review.

Subsequently, the commission will seek feedback from the public and stakeholders on a draft version of the revised Code, which will inform the final version.

As required by section 24 of the *Utilities Commission Act*, the commission will give notice of any variation of the Code to the responsible Minister and each licensed entity to which the Code applies. A notice advising of variations to the Code will be published in the Northern Territory Government Gazette. The commission will also publish a copy of the revised Code on its website.

A review of the Code and Guidelines is an action in the Northern Territory Government's Renewable Energy and Electricity Market Reform Implementation Plan 2018-2020 (initiative 4, action j). Therefore, during the review, commission staff will regularly engage with the Department of the Chief Minister (Economic and Environment Policy team) and the Department of Treasury and Finance (Utility Reform team) to keep them informed about progress and milestones of the review.

⁵ Section 24 of the *Utilities Commission Act* and clause 5.1(a) of the Northern Territory Electricity Ring-fencing Code.

Scope of the Review

The Code aims to 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 market power.⁶

In performing its functions, including reviewing the Code, the commission must have regard to the need to:

- promote competitive and fair market conduct
- prevent misuse of monopoly or market power
- facilitate entry into relevant markets
- promote economic efficiency
- ensure consumers benefit from competition and efficiency
- protect the interests of consumers with respect to reliability and quality of services and supply in regulated industries
- facilitate maintenance of the financial viability of regulated industries
- ensure an appropriate rate of return on regulated infrastructure assets.⁷

The commission will also take into account the objectives of the Code, which seek to promote and achieve the object of the *Utilities Commission Act* and the *Electricity Reform Act*.

In conducting the review, the commission will take the following matters, among others into consideration:

1. with the introduction of a market operator and the changing operational environment of the Northern Territory's electricity industry, whether there is adequate separation between the market operator, System Control and PWC's other business units
2. the impact of, and the potential for, duplication of ring-fencing requirements due to the introduction of the national Ring-fencing Guideline (electricity distribution) released by the AER, particularly for PWC Networks
3. which business activities or services require ring-fencing, the type of ring-fencing, and the appropriate degree of separation
4. the most suitable principles, methods and processes for ring-fencing business activities or services

⁶ Clause 2.1(a) of the Northern Territory Electricity Ring-fencing Code.

⁷ Section 6(2) of the *Utilities Commission Act*.

5. the most suitable approach for monitoring and reporting compliance with ring-fencing requirements, as well as processes for managing breaches
6. whether the benefit of complying with any additional ring-fencing obligations outweigh the potential costs
7. whether a code is still the most appropriate regulatory instrument to manage ring-fencing in the Northern Territory.

OVERVIEW OF RING-FENCING

Reasons for ring-fencing

Natural monopolies exist because in some markets, it is not feasible or efficient to duplicate existing major infrastructure. This creates a market where users have no, or limited options to obtain alternative services. As a result, monopolies have substantial market power which if used incorrectly, has the potential for negative outcomes for industry and consumers.

Regulation aims to protect consumers from the exercise of market power. However, businesses operating within regulated industries are often diverse, providing both regulated and competitive services to the market. This creates potential risk for the relevant business to receive an advantage in the competitive market due to the regulated parts of their business. For example, the relevant business may:

- cross-subsidise services in the competitive market with revenue derived from its regulated services
- provide its contestable business units with access to commercially sensitive information that was acquired through, and for the provision of, regulated services
- discriminate in carrying out its regulated services in favour of its other business units operating within the contestable market.

To avoid this, it is necessary to identify and separate the regulated (monopoly) business activities, costs, revenues and decision making processes from those that are associated with providing services in a competitive market.⁸ This is achieved through ring-fencing.

Natural monopolies are also usually subject to some form of economic regulation of the prices they can charge for their services due to the risk that they could otherwise use their market power to set prices above a competitive level. These regulated prices are usually set based on an estimate of the efficient costs of operating the regulated business. Where a single business provides a range of services, ring-fencing can assist in ensuring there is clear and appropriate allocation of costs between the various regulated and competitive services that the business offers, so that efficient prices can be set for each regulated service.

There are also some instances in the Northern Territory electricity supply industry where a regulated business has some quasi-regulatory functions, for example PWC's system control and market operator functions, and PWC's role in developing changes to the Network Technical Code and System Control Technical Code (SCTC).⁹ Ring-fencing can help ensure that any such functions are performed in a non-discriminatory manner.

⁸ Australian Energy Regulator, *Electricity Distribution Ring-fencing Guideline Explanatory Statement*, November 2016, page 11.

⁹ Section 66A(4) of the *Electricity Reform Act* requires the Commission to be consulted before a network provider can amend the Network Technical Code. The Commission reviews proposed amendments and can direct the network provider to change them, if necessary. The Commission approves the SCTC under section 38 of the *Electricity Reform Act*. Under the SCTC, the Commission must approve any proposed amendments.

Objectives of the Code

An objective of the Code is to create an environment where price, quantity and quality of electricity sold to end-use consumers is not biased due to the business structure of PWC. Accordingly, the Code currently aims to separate the regulated services of the prescribed business (PWC) from the competitive activities of its business to minimise the potential for anticompetitive behaviours and protect the long term interests of electricity consumers.

The purpose of the Code is to address actual and perceived threats of behaviours that may allow PWC to use its monopoly position to negatively impact the competitiveness of contestable markets or otherwise damage the long term interests of electricity consumers. Examples of the types of potential behaviours the Code currently seeks to prevent include:

- PWC allocating overheads from other business units (for example water or sewerage) into the overheads for the regulated parts of a business (such as Networks or System Control) resulting in the regulated business subsidising the competitive business
- Commercially sensitive information available to System Control, that it receives as the market operator, being used by other business units to make decisions that benefit PWC over other market participants
- when imposing constraints for system security purposes, System Control providing preferential treatment to PWC Networks at the disadvantage of generators competing in the market.

Minimum ring-fencing requirements

The current Code prescribes the minimum ring-fencing requirements for electricity entities that carry on a prescribed business in the Territory, which relate to:

- establishing and maintaining separate financial accounts which allocate any costs that are shared between a prescribed business and a related contestable business (to be prepared in accordance with the Accounting and Cost Allocation Procedures)
- providing related party goods and services on terms and conditions that are at arm's length
- when supplying nominated goods or services to a related contestable business, reducing the terms and conditions to writing (related party terms), and ensuring the nominated goods or services are only supplied on terms and conditions consistent with the related party terms¹⁰
- ensuring the prescribed business also offers to supply the same type of nominated goods and services to other customers, on comparable terms
- making sure the marketing staff of a prescribed business are not also used as marketing staff for its related contestable business

¹⁰ Nominated goods and services are listed in Schedule 3 of the Northern Territory Electricity Ring-fencing Code, which are currently wholesale electricity generation services and network access services.

- branding and marketing in a way that minimises any potential confusion for customers between the prescribed business and the related contestable business of the electricity entity
- preventing an electricity entity from marketing to customers any goods or services offered or provided by its related contestable business based on the reliability, quality, safety or other attribute of the goods or services provided by its prescribed business
- confining the representations electricity entities make to its customers about the service standards of any goods or services provided by its related contestable business to those associated with the goods or services directly provided by its related contestable business
- when sharing websites, separating and identifying the content dealing with the prescribed business as far as practicable from the content for the related contestable business, and highlighting which business is responsible for the contents
- protecting the ways confidential information provided to, or obtained by, the prescribed business can be used or disclosed to safeguard the commercial interests of a competitor of a related contestable business (confidential information is to be managed in accordance with the Information Procedures)
- requiring electricity entities to provide certain information to the commission to show compliance with the minimum ring-fencing requirements.¹¹

¹¹ Clause 3 of the Northern Territory Electricity Ring-fencing Code.

ISSUES FOR CONSIDERATION

Structure of the electricity supply industry in the NT

On 1 July 2014, as part of the Territory's electricity supply industry reforms, the contestable retail and generation businesses were separated out of PWC, with the creation of two new Government owned corporations, Jacana Energy and Territory Generation. The remaining monopoly electricity network and system control functions remained with PWC.

There are three regulated electricity networks in the Northern Territory: Darwin-Katherine, Alice Springs and Tennant Creek. The networks are independent from one another and are not connected to the national grid.

The transmission and distribution of electricity within these networks is operated by PWC Networks, who owns the associated poles, wires, substations, transformers, feeders and switching, monitoring and signalling equipment involved in transporting the electricity from generators to customers.

In addition to electricity, PWC undertakes a number of other functions as set out in the *Power and Water Corporation Act*, including water, sewerage, gas and some general functions.¹² PWC is made up of the following core operational business units, delivering services across the Northern Territory:

Power Networks (recently renamed Power Services)

- owns and operates the regulated and parts of the unregulated electricity network in areas prescribed in its network licence, issued by the commission under Part 3 of the *Electricity Reform Act*

System Control

- makes sure the electricity system is balanced and stable, safe and reliable through System Control operations pursuant to its system control licence issued by the commission under Part 3 of the *Electricity Reform Act*
- operates a wholesale market and performs market operator functions in relation to the Darwin-Katherine power network pursuant to its system control licence and regulation 3F of the Electricity Reform (Administration) Regulations
- is entitled to impose and recover charges incurred for the operations of system control, which must be approved by the Commission.

In its recent review and approval of updated system control charges, the commission confirmed that performing the market operator responsibilities are part of the system controller's functions under the *Electricity Reform Act*, Electricity Reform Regulations and the SCTC. Accordingly, the cost of carrying out these functions can be recovered by PWC under section 39(1) of the *Electricity Reform Act*.

¹² Sections 14, 14A, 14B and 14C of the *Power and Water Corporation Act*.

However, as the market operator functions only relate to the Darwin-Katherine network, the market operator component of the charge is only to be paid by customers supplied by this network. In determining the charge, it is limited to, and based on, the costs for performing the regulated market operator functions and total energy consumption for the Darwin-Katherine network only.

Identification of the costs to deliver regulated market operator functions and regulated system control functions relies on PWC separating the activities and allocating the time and costs to the regulated activity. During the review of updated system control charges, PWC advised it undertakes 70 activities to meet its system control regulatory obligations. The commission found a need for more detailed descriptions of activities to provide greater clarity of its regulated functions and those that are not. The commission recommended PWC should address these anomalies for the next review of the system control and market operator activities.

1. *Is the current degree of ring-fencing of system control and market operator functions from each other, and the rest of PWC, sufficient?*

Water Services (water and sewerage)

- owns and operates the large dams and groundwater fields to deliver drinking water to households and business and to take wastewater away and treat it prior to disposal
- operates a retail water and wastewater business in water and sewerage supply areas covered by its licences issued by the commission in accordance with Part 2 of the *Water Supply and Sewerage Services Act* (wastewater is the water that goes down the drain once used, for example basins, sinks and showers, which is treated so it can be recycled or disposed of)

Contractor for long term wholesale gas supply

- manages large scale gas purchase and transportation agreements and sells the gas to Territory Generation and other large businesses across the Territory

Remote and Regions

- owns and operates five generation plants in regional areas under its generation licence
- retails electricity to a small number of mining towns listed in its retail licence, as a result of legacy contracts with the NT Government
- provides full end to end electricity, water and sewerage services in Indigenous Essential Services (IES) remote towns and communities, under agreement with the Government and associated licences.¹³

¹³ Power Water Corporation, *Annual Report 2017-18*, page 11.

The commission understands that PWC is working to implement a new operating model which will bring its remote electricity and remote water teams from the Regions and Remote business unit into its other lines of business.

As mentioned above, PWC provides a range of regulated (monopoly) and unregulated (competitive) services, through the operation of its various business units. The current environment for the remaining competitive aspects of the electricity supply industry is that retail and generation services are primarily provided by the government-owned Jacana Energy and Territory Generation, with very limited competition.

The electricity supply industry in the Northern Territory is undergoing a period of significant change with government market reforms underway, such as the ongoing development of a competitive wholesale electricity market, implementation of the Northern Territory Electricity Market (NTEM) and the government's commitment to achieving a 50 per cent renewables target by 2030.

It is in this context that the commission is seeking feedback from stakeholders about which services and activities should be ring-fenced and the most suitable way of doing so. The Commission invites feedback on whether current ring-fencing requirements provide adequate separation between PWC's business units, particularly the degree of separation between System Control and the rest of PWC. Comments are also sought on the role the Code can play in supporting current electricity market reforms.

2. *Which business activities or services require ring-fencing and should be covered by the Code?*
3. *What are the most suitable ways to ring-fence business activities and services?*
4. *Is there adequate separation between PWC's business units under the current ring-fencing requirements?*
5. *How can the Code assist the Northern Territory Government to deliver its initiative to establish a regulatory framework which supports its Renewable Energy and Electricity Market Reform Implementation Plan for 2018-2020?*

Approach to ring-fencing in the NT

Licence conditions

Businesses operating in the electricity supply industry (such as generating or selling electricity, owning or operating an electricity network, or having system control over a power system) are required to be licenced by the commission in accordance with Part 3 of the *Electricity Reform Act*.

PWC currently holds a retail licence, a network licence, a generation licence and a licence for System Control (as well as licences for water supply services and sewerage supply services). Jacana Energy holds a retail licence and Territory Generation holds a generation

licence. The commission has also granted generation and retail licences to a number of privately owned businesses.¹⁴

The *Electricity Reform Act* provides that the commission may, when granting a licence, make it subject to certain conditions:

For networks

- requiring the electricity entity to maintain specified accounting records and to prepare accounts according to specified principles
- requiring the business of operating the electricity network authorised by the licence to be kept separate from any other business of the electricity entity or any other person in the manner and to the extent specified in the conditions

For retail

- requiring the business of selling electricity authorised by the licence as it relates to non-contestable customers to be kept separate from these other (contestable) businesses in the manner and to the extent specified in the conditions
- if the electricity entity sells electricity to non-contestable customers, requiring the electricity entity to maintain specified accounting records and to prepare accounts according to specified principles

For system control

- requiring the business of system control authorised by the licence to be kept separate from the business of generating electricity to the extent specified in the conditions
- requiring the electricity entity to maintain specified accounting records and to prepare accounts according to specified principles.¹⁵

The commission has not made these conditions explicit in current licences, but rather achieves these objectives through the Code (and subsequent Guidelines). However, it is a licence condition that licensees comply with the Code.¹⁶

Accounting, cost allocation and information procedures

Under the Code, PWC is required to develop procedures that ensure compliance with its ring-fencing obligations in the manner best suited to the nature and circumstances of its operations.

¹⁴ Refer to the Commission's Registry of Electricity Licences and Exemptions, available at <http://www.utilicom.nt.gov.au/Publications/Registers/Pages/Registry-of-Electricity-Licences-and-Exemptions.aspx>.

¹⁵ Sections 26, 28 and 30 of the *Electricity Reform Act*.

¹⁶ Clause 10 of the retail, network and generation licences and clause 11 of the system control licence.

In November 2001, the commission approved Accounting and Cost Allocation Procedures developed by PWC (then the Power and Water Authority), followed by the approval of the Information Procedures in July 2002. These approvals were extended to 30 June 2006.

In initially approving the Procedures, the commission's approval was subject to PWC, in consultation with the commission, reviewing the Procedures prior to expiration. On 12 May 2006, the commission delayed the foreshadowed reviews of the Procedures to a date to be determined, and extended the approval of the Procedures under the Code for an indefinite period.¹⁷

As the reasons for delaying the review of the Procedures has passed, and the Procedures have not been reviewed for a very long time, the Accounting and Cost Allocation Procedures and the Information Procedures may need to be reviewed by PWC and resubmitted to the commission for approval once the review and revision of the Code and Guidelines is complete.¹⁸

National obligations

In the national framework, the National Electricity Rules set out the requirements for the AER to develop a Cost Allocation Guideline and Distribution Network Service Providers (DNSPs) to submit a Cost Allocation Method (CAM), that the AER must approve. The AER Ring-fencing Guidelines also impose additional cost allocation requirements for cost allocation between distribution and non-distribution services.

National Electricity Law and Rules

The *National Electricity (Northern Territory) (National Uniform Legislation) Act* (NT NEL) commenced in the Northern Territory on 1 July 2015 and the Territory has been progressively adopting parts of the National Electricity Rules, modified for Territory circumstances (NT NER), since 1 July 2016.

As mentioned above, under the NT NER, PWC is required to submit its proposed CAM to the AER for approval.¹⁹ PWC Networks submitted its CAM to the AER in 2017 which will take effect from 1 July 2019, in line with the 2019 Network Price Determination.

In regards to financial reporting requirements, these are not specified by the NT NER or the AER's Guidelines. Rather, the AER issues Regulatory Information Notices (RINs) under Division 4 of the NEL (and the NT NEL) to collect information. PWC Networks has been required to comply with AER RINs since 1 July 2016.

In the National Electricity Market, all metering services are now contestable and metering businesses operated by DNSP must be kept separate. However, the NT NER provides that

¹⁷ Utilities Commission of the Northern Territory, *Extension of Approval of Procedures Pursuant to Clause 5 of the Electricity Ring-fencing Code*, 2006 (note this is now clause 4 in the 2009 revised version of the Code).

¹⁸ Utilities Commission of the Northern Territory, *Approval of Accounting and Cost Allocation Procedures*, 2001 and Utilities Commission of the Northern Territory, *Approval of Information Procedures*, 2002.

¹⁹ Clause 6.15.3 and clause 6.15.4 of the *National Electricity Rules* (and the *Northern Territory Electricity Rules*).

PWC Networks will be the monopoly metering coordinator, metering service provider and metering data services provider until (at least) June 2024.

Nonetheless, under the national framework, the AER collects financial information from PWC (through the issue of RINs) as part of its process for monitoring PWC's compliance with the Distribution Determination.²⁰ PWC is required to provide the AER with information separately identifying revenue from alternative control services, which includes metering.

AER Ring-fencing Guidelines for electricity distribution

The first national Ring-fencing Guideline for electricity distribution was published by the AER in 2016. The Guideline is legally binding, meaning DNSPs must comply with it.²¹ PWC Networks is a DNSP in accordance with the NT NER and the AER Guideline.

The purpose of the AER Guideline is to separate the competitive and regulated parts of the DNSPs to protect the long term interests of electricity consumers. The obligations set out in the Guideline include functional, accounting and legal separation. The obligations target two potential harms that can occur if a DNSP decides to offer services into a contestable market, namely cross-subsidisation and discrimination.²²

The AER's Guidelines will commence in the NT on 1 July 2019 and certain aspects will not have effect in the Territory, notably the requirement for legal separation and requirements related to staff sharing, branding and cross-promotion.²³

National Access Code

The National Access Code has been administered by the AER since 1 July 2015 and requires the network service provider to keep accounts and records relating to its electricity network business that give a true and fair view of the business (as distinct from other businesses carried on by the network provider or any associate or related body corporate of the network provider).

The commission is interested in stakeholders' views about the approach and impact of the national obligations in regards to ring-fencing for the Northern Territory electricity supply industry, in particular PWC Networks.

The commission invites feedback on whether a code is still the most appropriate way to manage ring-fencing in the Northern Territory. For example, could it be managed more effectively through license conditions or other instruments?

The commission also seeks comments on the relevance and sufficiency of matters covered by the Code (and associated documents), for example the harms ring-fencing is seeking to

²⁰ Australian Energy Regulator, *Final Decision Power and Water Corporation Distribution Determination 2019 to 2024*, April 2019.

²¹ Clause 6.17.1 of the *National Electricity Rules* (and the *Northern Territory National Electricity Rules*).

²² Australian Energy Regulator, *Ring-fencing Guideline (electricity distribution) Fact Sheet* (2016) <https://www.aer.gov.au/system/files/AER%20Ring-fencing%20Guideline%20-%20Fact%20Sheet%20-%2030%20November%202016.pdf> accessed 8 March 2018.

²³ Clause 1.17.1A and 1B of the *Northern Territory National Electricity Rules*.

address, the minimum ring-fencing requirements, exemptions available, as well as the principles, procedures and definitions.

6. *Should cost allocation and financial reporting obligations be included in the Code or be covered by different/separate instruments?*
7. *What is the impact of, and potential for duplication of ring-fencing requirements due to the introduction of the national Ring-fencing Guideline for electricity distribution by the AER?*
8. *Taking into consideration the national obligations, does the NT still need its own Code? Would it be better to use a different approach, for example supplementary guidelines that build on the national obligations?*
9. *Is a code still the most appropriate way to manage ring-fencing in the Northern Territory? If not, what are the preferred alternatives and why?*
10. *Are the matters covered by the current Code and associated documents relevant and sufficient to meet the needs of the Northern Territory electricity supply industry?*

Compliance and enforcement

Monitoring and reporting compliance

The commission's approach to compliance is set out in its *Compliance Framework and Reporting Guidelines* which requires licence holders to develop and maintain adequate compliance frameworks and compliance reporting processes.

Under the clause 3.1 of the current Code, PWC is obliged to establish and maintain a separate set of financial accounts and reports in respect of each of its prescribed businesses and its electricity business as a whole. The accounts and reports are to be prepared in accordance with the Accounting and Cost Allocation Procedures, which set out how PWC will establish and maintain these accounts. It is a requirement of the Code that PWC comply with any approved Procedures, and the accounts and reports are submitted to the commission as part of licence holders' annual returns.²⁴ They are assessed for compliance with the Code and Procedures and up until 2008, the commission published the accounts and reports on its website.

²⁴ Clause 4.6(a) of the Northern Territory Electricity Ring-fencing Code; section 19(2)(a) of the *Electricity Reform Act* and regulation 4(1) of the Utilities Commission Regulations.

In addition to the commission's requirements, since the AER took over responsibility for network price regulation and oversight of network access, PWC is required to submit regulatory accounts to the AER which are made publically available on the AER's website.

Clause 7.4(a) of the Code requires the licensee to report any breach of its obligations under the Code to the commission as soon as reasonably possible. It must also advise the commission of the remedial action that is being undertaken to rectify the breach.

Further, under the terms of their licenses, regulated entities are required to monitor and self-report any *material* breach of their obligations to the commission, as soon as reasonably possible after discovering the breach. As with the Code, the licensee must advise what measures are being undertaken to resolve the breach.²⁵

Subsequently, every year, licensees are required to prepare and submit an annual compliance report to the commission which (among other things) reports on all instances of non-compliance, stating whether they are material or non-material, as well as the steps being taken to correct each compliance breach.²⁶

Enforcing compliance

It is a licence requirement that licensees comply with the Code.²⁷ In most cases, the commission would expect to be able to resolve matters with the regulated entity in breach by requesting that active steps be taken to remedy the breach. However, should the regulated entity fail to respond to the commission's request, the commission may consider escalating the matter to disciplinary action.

A breach of a licence condition may result in a penalty of up to 2,500 penalty units. The commission may also recover an amount equal to that benefited by the electricity entity when contravening the licence condition.²⁸ Such recovery is done through the courts.

Alternatively, section 36(1)(b) of the *Electricity Reform Act* allows the commission to suspend or cancel a licence in the case of an electricity entity being guilty of a 'material' contravention of a licence condition or any other requirement imposed by the *Electricity Reform Act* or any other Act.

The commission seeks feedback from stakeholders about the adequacy of current methods for monitoring and reporting compliance with ring-fencing obligations, as well the potential for duplication of reporting due to national requirements. The commission would also like to receive submissions about whether the current approach to managing breaches is satisfactory, and if the available penalties are sufficient.

²⁵ Clause 11.5(a) of the retail, networks and generation licences, and clause 12.5(a) of the system control licence.

²⁶ Clause 11.2(a) of the retail, networks and generation licences, and clause 12.2(a) of the system control licence.

²⁷ Section 24(1)(a) of the *Electricity Reform Act* and clause 10 of the retail, network and generation licences, clause 11 of the System Control licence.

²⁸ Section 31 of the *Electricity Reform Act*; as at 1 July 2010, the value of a penalty unit is \$133.

11. *Is the current method for monitoring and reporting compliance (or non-compliance) with the Code adequate? Are there any preferred alternative options?*
12. *How should the Code address the potential for duplication of obligations for PWC Networks to produce and submit separate financial accounts and reports to the Commission and the AER?*
13. *Is the Commission's current approach to managing breaches of the Code adequate?*
14. *Are the penalties for breaching ring-fencing obligations sufficient?*

APPENDICES

Appendix A: Consolidated list of questions for stakeholders

1. *Is the current degree of ring-fencing of system control and market operator functions from each other, and the rest of Power Water Corporation (PWC), sufficient?*
2. *Which business activities or services require ring-fencing and should be covered by the Northern Territory Electricity Ring-fencing Code (the Code)?*
3. *What are the most suitable ways to ring-fence business activities and services?*
4. *Is there adequate separation between PWC's business units under the current ring-fencing requirements?*
5. *How can the Code assist the Northern Territory (NT) Government to deliver its initiative to establish a regulatory framework which supports its Renewable Energy and Electricity Market Reform Implementation Plan for 2018-2020?*
6. *Should cost allocation and financial reporting obligations be included in the Code or be covered by different/separate instruments?*
7. *What is the impact of, and potential for duplication of ring-fencing requirements due to the introduction of the national Ring-fencing Guideline for electricity distribution by the Australian Energy Regulator (AER)?*
8. *Taking into consideration the national obligations, does the NT still need its own Code? Would it be better to use a different approach, for example supplementary guidelines that build on the national obligations?*
9. *Is a code still the most appropriate way to manage ring-fencing in the NT? If not, what are the preferred alternatives and why?*
10. *Are the matters covered by the current Code and associated documents relevant and sufficient to meet the needs of the NT electricity supply industry?*
11. *Is the current method for monitoring and reporting compliance (or non-compliance) with the Code adequate? Are there any preferred alternative options?*
12. *How should the Code address the potential for duplication of obligations for PWC Networks to produce and submit separate financial accounts and reports to the Commission and the AER?*
13. *Is the Commission's current approach to managing breaches of the Code adequate?*
14. *Are the penalties for breaching ring-fencing obligations sufficient?*