
LETTER OF TRANSMITTAL

The Hon Syd Stirling, MLA
The Treasurer
Parliament House
DARWIN NT 0800

Dear Treasurer

UTILITIES COMMISSION ANNUAL REPORT 2002-03

In accordance with the provisions of section 35 of the *Utilities Commission Act 2000*, I am pleased to provide you with the Annual Report of the Utilities Commission of the Northern Territory for the financial year ended 30 June 2003.

This report incorporates information regarding the work carried out by the Commission during the 2002-03 financial year under:

- the *Network Access Code*, in accordance with section 13(2) of the *Electricity Networks (Third Party Access) Act 2000*; and
- other relevant industry regulation Acts, specifically the *Electricity Reform Act 2000* and the *Water Supply and Sewerage Services Act 2000*.

As such, this Report also serves as an annual report on the Commission's activities under of these other Acts.

I also draw your attention to section 35(2) of the *Utilities Commission Act 2000*, which requires that a copy of this Report be tabled in the Legislative Assembly within six sitting days after receipt.

Yours sincerely



Alan Tregilgas
Utilities Commissioner
for the Utilities Commission
26 September 2003



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COMMISSIONER'S OVERVIEW

Year in review

The Commission's focus during the year was on:

- undertaking reviews for the Regulatory Minister on matters arising from the withdrawal of NT Power from the Territory's electricity market;
- reviewing experience with the code relating to third party access to Power and Water's electricity networks; and
- preparing for the network pricing reset due prior to commencement of the second regulatory control period on 1 July 2004.

These and other activities undertaken by the Commission during the year are canvassed in the body of this Annual Report.

Challenges ahead

NT Power's decision during the year to cease carrying on operations after 2½ years in the Territory's electricity supply industry represented a sea-change for all concerned. As noted previously, while such a development may be part and parcel of a properly functioning market, contestable customers as a result no longer have an effective choice when it comes to negotiating (or re-negotiating) a contract for the supply of electricity in the Territory. This will remain the case until a new competitor or competitors enter the market.

In the absence of a competitor to Power and Water, economic regulation invariably has an increased role to play as a surrogate for competition particularly on behalf of contestable customers.

In these circumstances, the Commission is nevertheless mindful of the ongoing need to implement such regulation in the Territory context:

- in a form that is straight-forward and low-cost; and
- in a manner that minimises regulatory uncertainty (and emphasises regulatory stability and predictability).

Coming year's work program

The main elements of the Commission's work program over the coming year will be:

- to design and implement network price regulation arrangements to apply during the second five year regulatory control period;
- to implement effective monitoring of wholesale energy (generation) prices borne by retailers and so contestable customers while competition is absent;
- to codify revised power system control arrangements including associated ancillary service provision and pricing arrangements;
- to promote discussion of the options available for establishing, monitoring and enforcing minimum standards of service in the electricity, water and sewerage services industries; and

- in consultation with interested parties, to further consider possible technical amendments to the *Network Access Code* following up on the Commission's review of the Code.

Other matters

Finally, I wish to place on the record once again my appreciation for the commitment and effort displayed during the year by officers of the Commission and by the management and staff of regulated entities interfacing with the Commission.

*Alan Tregilgas
Utilities Commissioner
September 2003*

LICENSING

The Commission issues licences to persons wishing to carry on operations in the Territory's electricity supply, water supply and sewerage services industries, in accordance with the provisions of relevant industry regulation Acts.

Licences on issue

Electricity

On 1 July 2002, licences were held by two electricity entities.

Power and Water Corporation ("Power and Water"), formerly the Power and Water Authority, held four licences:

- system control (to 30 June 2003);
- retail (to 31 March 2005);
- generation (to 30 June 2010); and
- network (to 30 June 2020).

Power and Water's system control licence was renewed for a further five years on 27 June 2003. The Commission has flagged its intention to undertake a review of the role and functions of the power system controller in the NT context, targeting a 30 June 2004 completion date. The licence was extended on the basis that variations may be required to the licence conditions to reflect the outcome of the Commission's review.

NT Power Generation Pty Ltd ("NT Power") held two licenses:

- retail (to 31 October 2006); and
- generation (to 31 October 2011).

Effective in September 2002, NT Power withdrew from the market and subsequently surrendered its licences pursuant to section 35 of the *Electricity Reform Act*.

At the establishment of the *Electricity Reform Act*, which took effect on 1 April 2000, the Commission determined that there were three broad types of entities that required licensing, and listed the following in order of priority for issuing those licences as:

- those in the competitive (contestable) sectors including new entrants to the market;
- independent power producers; and
- isolated system operators.

The Commission's priorities were based on a risk minimisation strategy. The Commission considered that there would be comparatively little risk to end-use consumers in delaying the issuing of licences for independent power producers and for suppliers in isolated systems until after the higher priority licences were issued. The impact of licensing in these areas is largely

administrative in nature due to the historical and ‘captive’ market of such systems and the commercial interest of the suppliers concerned in achieving a stable and constant electricity supply to associated mining operations.

In line with this approach, during 2002-03 the Commission granted licences to the following producers whose operations in the electricity supply industry are peripheral to their core business:

- Pine Creek Power Pty Ltd;
- McArthur River Power Pty Ltd;
- Cosmo Power Pty Ltd;
- Central Energy Power Pty Ltd;
- Energy Resources of Australia Ltd; and
- Groote Eylandt Mining Company Pty Ltd.

The licence issued to Cosmo Power Pty Ltd ceased on 31 March 2003 following the expiry of its power purchase agreement with Power and Water.

Water and Sewerage

On 1 July 2002, Power and Water held the following licences under Part 2 of the *Water Supply and Sewerage Services Act*:

- water supply (to 31 December 2027); and
- sewerage services (to 31 December 2027).

Exemptions and exclusions

Electricity

In order for NT Power to secure a sale of the generation unit located at its Mount Todd facility, the Commission granted NT Power an exemption from the need to hold a generation licence from 8 November 2002 until 30 June 2003. During this time, NT Power was able to operate the generation unit for demonstration purposes to potential purchasers (and purposes incidental to such demonstration), without holding a licence for that purpose.

During the year, the Commission considered whether localised and own-use activities come within the requirement to be licensed under the *Electricity Reform Act*. The Commission has decided that it is appropriate for ‘small’ operations to be outside the scope of the Act. The Regulatory Minister has approved the drafting of a Regulation under the Act to exclude certain small operations in the electricity supply industry from the definitions of ‘generation’ and ‘selling’ of electricity, and thus from the requirement to be licensed.

Water and Sewerage

On 17 February 2003, the Commission issued an exemption from the need to hold a licence under the *Water Supply and Sewerage Services Act* to persons on-supplying water services within prescribed licence areas. The Commission expects to consider exempting on-suppliers of sewerage services in the coming year.

Monitoring of licence conditions

Both the *Electricity Reform Act* and *Water Supply and Sewerage Services Act* require licensees to lodge with the Commission an

annual return containing the information required by the Commission by condition of the licence or by notice in writing.

While Regulation 4(1) of the *Electricity Reform (Administration) Regulations* and Regulation 2 of the *Water Supply and Sewerage Services Regulations* both prescribe 1 August as the date by which the electricity, water and sewerage licence returns must be lodged, the Commission has been aware that some of the requisite information, in particular the regulatory financial statements, may not be available by 1 August. Accordingly, the Commission has dually categorised its information requirements into those required by 1 August and those required by 1 December.

During 2002-03, Power and Water lodged returns with respect to the 2001-02 financial year for each of its licensed areas of operation.

While NT Power was initially requested to provide annual licence returns, the Commission did not pursue lodgment once advised that NT Power was in the process of an orderly exit from the market.

PRICE REGULATION

The Commission regulates certain prices in the Territory's electricity supply industry in accordance with the relevant industry regulation Acts. The Commission does not have an equivalent role in the Territory's water supply and sewerage service industries.

Electricity networks

Under the *Network Access Code*, the Commission exercises price regulation at two levels.

Revenue caps

The first is by setting the maximum allowable revenue (or "revenue cap") that the operator of a regulated network, currently only Power and Water, is permitted to recover annually from network access tariffs and charges. The *Network Access Code* sets out the methodology to be used by the Commission to determine the network operator's annual revenue cap.

On 1 April 2003, the Commission determined revenue caps to apply during the 2003-04 financial year for the Darwin-Katherine, Tennant Creek and Alice Springs networks. This included the incorporation into the revenue cap arrangements of the Darwin-Katherine transmission line.

Network tariffs

The second level of the Commission's price regulation involves consideration and approval of the schedule of individual network tariffs and charges aimed at recovering the revenue cap.

On 27 May 2003, the Commission approved network tariff schedules for use by the Power and Water from 1 July 2003. The approved tariffs incorporated revisions to the tariffs initially submitted by Power and Water. In July 2003, the Commission published a detailed decision paper entitled *Network Revenue Determinations and Tariff Approvals: 2003-04*.

Extension of regulatory control period

At the commencement of 2002-03, the first 'regulatory control period' was expected to end on 30 June 2003, and a second five-year period to commence after that.

However, Power and Water proposed, and the Commission supported, the idea of extending the first regulatory control period by 12 months for the following reasons:

- it would permit implementation of any revisions to the *Network Access Code* as a result of a review of the Code being undertaken during 2002-03 (see Conduct Regulation chapter) to be settled prior to commencement of the second regulatory control period;
- parties to the Code's review would be able to focus first on that review; and
- criticism could be avoided that parties were not being given sufficient time to consider issues arising in the context of the

regulatory reset necessary prior to commencement of the second regulatory control period.

The Regulatory Minister agreed to the proposal to extend the first regulatory control period to 30 June 2004, and the necessary amendments to the *Network Access Code* were published in Gazette G12 on 26 March 2003.

**Regulatory
reset**

The regulation of network prices during 2002-03 (with respect to prices applying in the 2003-04 financial year) was undertaken in accordance with the price regulation methodology put in place at the commencement of the first regulatory control period.

During 2002-03, the Commission undertook preparatory research for an issues paper canvassing options for the form of regulation (and associated issues) to apply in the second regulatory control period. The *Network Access Code* requires the Commission as regulator – in consultation with interested parties – to review the price regulation methodology used in the first regulatory control period with a view to modifying the methodology as appropriate. The issues paper was published in early July 2003.

**Retail prices paid by non-contestable electricity
customers**

Electricity

Electricity prices paid by non-contestable customers, whether residential or commercial, are regulated directly by the Government, unlike electricity prices paid by contestable customers which are subject to negotiation between these customers and their chosen supplier. The Government exercises its control over prices via an Electricity Pricing Order (“EPO”) made under section 44 of the *Electricity Reform Act*.

The Commission is required to enforce compliance with the EPO as if the EPO were a determination of the Commission under the *Utilities Commission Act*.

No additional work was undertaken in this area in 2002-03, and the EPO which took effect from 1 July 2001 continues until it is superseded.

Jabiru Pricing

In January 2003, the Commission received terms of reference from the Regulatory Minister for a review of costs associated with supplying electricity to the Jabiru township. The parties to the review included Power and Water and Energy Resources of Australia.

The Commission reported to the Minister in April 2003 and, in accordance with the terms of reference provided by the Minister, the Commission’s findings remain confidential to the Government and the parties to the review.

System imbalance charges

Under the *Network Access Code*, the Commission oversees prices paid (or received) by third-party generators when purchasing (or selling) any mismatches between the energy generated by such

generators and the load attributable to end-use customers supplied by these generators.

**Load
following
charges**

Following revisions to the *Network Access Code* that took effect on 1 July 2001, the Commission determined various system imbalance prices to apply until new economic dispatch arrangements envisaged by revisions to the *Network Access Code* were in place and fully operational. These prices remained in place throughout 2002-03.

**Compliance
review of
energy loss
factors**

In June 2003, the Commission issued terms of reference for a review of Power and Water's compliance with Schedule 13 of the *Network Access Code*, following concerns raised regarding the energy loss factors applied by Power and Water while NT Power operated in the Territory's contestable market.

Under the Code's out-of-balance energy arrangements, the power system controller is required to take account of network energy losses when settling out-of-balance energy supplied or demanded by a generator. The energy loss factors were estimated by Power and Water as the network provider in accordance with Schedule 13 of the Code.

The Commission expects to conclude this review by the end of 2003.

Power system charges

The *Electricity Reform Act* requires the Commission to approve charges imposed by the power system controller.

The charges approved by the Commission with effect from 1 July 2003 were unchanged on those approved for the previous year.

Pricing of ancillary services

Regulation 3 of the *Utilities Commission Regulations* grants the Commission authority to determine prices relating to the provision of ancillary services in the electricity supply industry.

During the year, the Commission carried out preliminary work in this area. As a result, the Commission has decided to proceed by requesting Power and Water, in its capacity as the holder of the system control licence in the regulated power systems, to develop an 'ancillary services arrangement' for the Commission's consideration and approval.

Following receipt of the proposed arrangement, the Commission will publish a preliminary assessment of those arrangements and to seek the comments of interested parties, with a view to having approved arrangements taking effect from 1 July 2004.

Wholesale generation prices

Following NT Power's withdrawal from the Territory's electricity market effective in September 2002, and recognising the pricing implications that can arise from monopoly service provision, the

Government approved in principle a process of prices oversight of Power and Water's generation business by the Commission for as long as that business is not subject to competition or the tangible threat of competition. The purpose of such regulation is to ensure that the wholesale energy prices paid by contestable customers are similar to those that would occur in a competitive environment.

In accordance with terms of reference provided by the Regulatory Minister, the Commission developed a suitable regulatory framework for consideration by the Government. The Commission's report on this matter was submitted to the Minister in May 2003. In accordance with the terms of reference, the Commission's findings remain confidential to the Government.

Pricing of water supply and sewerage services

Water and Sewerage

Water and sewerage service prices are regulated directly by the Government. Section 60 of the *Water Supply and Sewerage Services Act* provides for prices to be controlled by the Government via a Water and Sewerage Pricing Order ("WSPO") similarly to the arrangements applying with respect to non-contestable customers in the electricity supply industry.

The Commission is required to enforce compliance with the WSPO as if the WSPO were a determination of the Commission under the *Utilities Commission Act*. The WSPO which took effect from 1 January 2002 continues until it is superseded.

Water and Sewerage price structures

In December 2002, in accordance with section 6(b) of the *Water Supply and Sewerage Services Act*, the Regulatory Minister requested the Commission to undertake a review of Power and Water's water and sewerage pricing structures.

The Commission was asked to consider whether changes are required to satisfy relevant COAG requirements and to encourage appropriate investment decisions and water conservation, as well as to identify the likely price effects on individual classes of customers arising from its recommended changes.

The Commission delivered its report to the Minister in April 2003. In accordance with the terms of reference provided by the Minister, the Commission's findings remain confidential to the Government.

CONDUCT REGULATION

The Commission is assigned a variety of roles when it comes to setting, approving and enforcing codes and rules aimed at ensuring appropriate types of behaviour and conduct by licensed or regulated entities in the Territory's electricity, water and sewerage services industries.

Network Access Code

Review of Code

Third-party access to the services provided by prescribed electricity networks in the Northern Territory is currently governed by the *Network Access Code* which is a schedule to the *Electricity Networks (Third Party Access) Act*.

Section 8(2) of that Act required the Regulatory Minister to review the Code before 30 June 2003. At the Minister's request, and pursuant to section 8(3) of the Act, the Commission undertook an inquiry into the Code's effectiveness in facilitating competition and the use of networks by electricity generators and retailers and preventing the exercise of market power by the owners/operators of electricity networks, including in light of experience with application of the Code since 1 April 2000. This review was a public inquiry consistent with section 31 of the *Utilities Commission Act*.

The Commission released an issues paper in December 2002 to facilitate community and stakeholder consultation on this matter.

A draft report was released for comment in March 2003, and the Commission delivered its final report on the effectiveness of the Code to the Minister in April 2003.

The Commission made a number of recommendations for change, with key recommendations relating to:

- the inclusion of a formal Code review process;
- clarification of various pricing issues; and
- provision for the regulator to issue guidelines where a material uncertainty exists regarding the conduct of Code participants.

The Minister has yet to announce the outcome of his review, including responses to the Commission's recommendations.

Ring-fencing Code

An *Electricity Ring-fencing Code* developed and published by the Commission took effect on 1 July 2001 (with subsequent amendments in January 2002). The Code aims at ensuring that monopoly businesses in regulated industries affiliated to contestable businesses do not discriminate against a competitor of that affiliated business, or financially or competitively advantage that affiliated business to the detriment of a competitor of that affiliated business.

Clause 5 of the Code requires the Commission to approve, among other things, information sharing procedures as submitted by Power and Water. On 31 July 2002, the Commission approved procedures for use until 30 June 2005.

Contestable Customer Supply Code

On 18 March 2002, the Regulatory Minister approved the making of a Regulation authorising the Commission to make a code to deal with the arrangements necessary to ensure continuity of supply to customers who, for whatever reason, find themselves out-of-contract. The Code is intended to support arrangements currently in place through provisions found in clauses 17 and 21 of Power and Water's retail licence. The Commission published a draft Code in September 2002.

In view of developments in the contestable market during 2002-03, the Commission has chosen to delay publishing a final Code.

National regulatory reporting

In March 2002, a core set of nationally consistent performance reporting measures developed under the auspices of the Utility Regulators Forum (of which the Commissioner is a member) was published.

During 2002-03, the Commission undertook consultations with Power and Water aimed at establishing a timetable to phase in regulatory reporting consistent with the agreed national reporting requirements. In addition to contributing to the national regulatory database, reporting from a Territory context will assist in:

- benchmarking Power and Water's costs and service levels with comparable electricity distributors around Australia;
- setting standards of service in the Territory's electricity industry; and
- public reporting of Power and Water's performance and reliability.

STANDARDS OF SERVICE REGULATION

The Commission is assigned a role by the *Electricity Reform Act* in both ensuring that the standards of service enjoyed by non-contestable customers in the electricity supply industry do not fall below minimum levels and, in some circumstances, reviewing and revising such minimum standards. The Commission does not have an equivalent role in the Territory's water supply and sewerage service industries.

Setting minimum standards of service

Under section 92 of the *Electricity Reform Act*, the standards of service applicable in the year prior to commencement of the Act are the minimum standards to be observed by suppliers to non-contestable customers. The Commission is also empowered to review these minimum standards taking into account, among other things, relevant national benchmarks of service for non-contestable customers.

During 2002-03, the Commission continued its research and development activities regarding the setting of minimum standards of service for non-contestable customers.

Recognising that price and quality of supply are directly related, the Commission has delayed publication of a proposed discussion paper on this issue so that it may be dealt in conjunction with consideration of network price regulation for the second regulatory control period.

In considering these issues, the Commission is taking into account the work done by other jurisdictional regulators, particularly the Essential Services Commission of South Australia, the Queensland Competition Authority, and the Australian Competition and Consumer Commission.

Compliance with minimum standards of service

Whatever the basis of the minimum standards of service set, the Commission has the responsibility to monitor licensees' compliance with these standards.

The information necessary to enable monitoring of standards of service against the historical levels is only just becoming available. The Commission expects to commence reporting on these matters in the coming year.

TECHNICAL REGULATION

Power system monitoring

Under section 45 of the *Electricity Reform Act*, the Commission is required to undertake an annual review of prospective trends in the capacity and reliability of the Territory's power system, and to submit a report to the Regulatory Minister. The Commission undertakes the function in the absence of a separate technical regulator in the Territory or a government department with similar functions.

2002 Review

In December 2002, the Commission released its 2002 Annual Review, reporting on the prospects for system capacity and system load, as well as on the domestic gas supply outlook in the Territory.

The review found that forecast electricity demand in the Alice Springs regulated system is likely to encroach on prudent reserve margins between 2004 and 2006, warranting action by the Government aimed at encouraging additional capacity. Existing generation capacity in both the Darwin-Katherine and Tennant Creek regulated systems was found to be sufficient for the foreseeable future.

The gas supply outlook gave rise to 'adequacy' issues, with the Commission's analysis finding that production from the Palm Valley field in the Amadeus Basin is likely to decline substantially over the next few years. Under a pessimistic scenario, the Commission found that the combined volumes from the Amadeus Basin might not be sufficient to supply all the regulated power systems' requirements after 2006.

2003 Review

The Commission undertook work on the 2003 Annual Review during the year, which is expected to be published by the end of 2003.

The 2003 Review will largely be an update of the 2002 Review with the forecast electricity demand and supply being recast to reflect the current outlook. The Commission will again assess the likely impact of major developments on the regulated systems' particularly the ConocoPhillips LNG plant which has the potential for the greatest direct impact on the Darwin-Katherine system.

The Commission is also updating its assessment of the Territory's gas supply outlook, particularly in light of recent favourable developments.

System Control Technical Code

Section 38 of the *Electricity Reform Act* requires the power system controller to prepare a System Control Technical Code and submit it for approval to the Commission. This code sets out the controller's competitively neutral operating protocols, arrangements for system security and system dispatch, as well as arrangements for the interruption of supply.

This code was approved by the Commission on 2 August 2002 for the term of Power and Water's system control licence.

Network Technical Code

Clause 9(2) of the Code requires Power and Water to prepare and make publicly available a network technical code and network planning criteria. Such a code (and associated criteria) was finalised during 2000.

As a consequence of approval of the system control technical code, the Commission requested Power and Water to revise the network technical code accordingly. The Commission approved a revised code (and associated criteria) submitted by Power and Water in March 2003. The code will continue until superseded or revoked by the Commission.

COMPETITION OVERSIGHT

While the Commission cannot of itself foster competition, it has some residual functions and powers that enable it to monitor competition and suggest market improvements. The principal role the Commission can play in this regard is to ensure that it exercises its functions and powers in regulated monopoly sectors so as to protect competition in contestable sectors upstream and downstream of those monopoly sectors.

Competition in the NT electricity market

In September 2002, NT Power – the only competitor to Power and Water in the Territory’s electricity market – exited the electricity market, citing an inability to secure on-going gas supplies.

In light of these developments, in January 2003 the Government decided to suspend the contestability timetable that would have seen full retail contestability achieved by April 2005. This has the effect of halting contestability at the 750MWh per annum level until prospects for competition re-emerge.

Provision of information

Withdrawal of NT Power from the market

Following NT Power’s cessation of operations in the Territory electricity market, the Commission subsequently wrote to all contestable customers advising them of market arrangements going forward and their rights under the *Electricity Reform Act*.

Market Information

In December 2002, the Commission published market information on the size and composition of the Territory’s electricity supply industry, with respect to 2001-02.

Investigating complaints

Under section 48 of the *Electricity Reform Act*, the Commission is obliged to investigate complaints against any electricity entity made on the grounds that the entity is engaging in conduct that is contrary to the objects of that Act or the *Utilities Commission Act*. Such objects include promoting efficiency and competition in the electricity supply industry. Despite some preliminary inquiries from potential complainants, no formal complaints were lodged with the Commission during 2002-03.

Advice to the Government

Under section 6(b) of the *Electricity Reform Act*, section 10(a) of the *Electricity Networks (Third Party Access) Act* and section 6(b) of the *Water Supply and Sewerage Services Act*, the Commission has the function of advising the Regulatory Minister on the operations of the respective Acts.

The Commission exercises this function by providing written and verbal advice to the Minister on matters primarily of an administrative nature. Broad policy advice on economic regulation matters is the primary responsibility of the NT Treasury, although the Commission also puts its view to the Minister where this is necessary or appropriate.

*Effectiveness
of
contestability*

Under section 6(g) of the *Utilities Commission Act*, the Commission also has the function of advising the Regulatory Minister on any matter referred to the Commission by the Minister.

Under this power, at the Minister's request, in May 2002 the Commission commenced a review of the effectiveness of contestability to date in both the generation and retail sectors of the Territory's electricity supply industry. The Commission reported to the Minister in August 2002. In accordance with the terms of reference provided by the Minister, the Commission's findings remain confidential to the Government.

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APPENDIX 1

BACKGROUND INFORMATION ON THE COMMISSION

Establishment of the Commission

The Utilities Commission was established at the commencement of the *Utilities Commission Act* on 21 March 2000, and charged with administering economic regulation in nominated industries in the Northern Territory.

Independence and accountability of the Commission

While established as a separate administrative unit within the NT Treasury, the Commission has specific statutory powers and undertakes its considerations independently of Treasury.

The independence of the Commission from the Government, and from any government-owned business operating in industries regulated by the Commission, is achieved by provisions in the *Utilities Commission Act* requiring that:

- the Commission not be subject to Ministerial direction in the performance of its regulatory functions; and
- members of the Commission be appointed for a fixed term and only subject to dismissal before the end of that term on account of misconduct or incapacity.

This independence does not deem the Commission unaccountable. There are several mechanisms in place in the *Utilities Commission Act* that require consistent, effective and accountable regulation on the part of the Commission.

The *Utilities Commission Act* places certain requirements and obligations on the Commission with regard to the regulatory processes it adopts. These requirements aim to ensure regulatory accountability through transparency and public disclosure of regulatory processes as well as the basis of regulatory decisions and reasonable certainty and consistency over time of the outcomes of regulatory processes.

The *Utilities Commission Act* also provides that an affected party can request a review of a decision of the Commission. An affected person may subsequently appeal the outcome of such a review to the Supreme Court. Such appeals may only be made on the grounds that there has been bias, or that the facts on which the decision is based have been misinterpreted in a material respect.

When deciding on determinations or approvals, or when making codes or rules under the *Utilities Commission Act*, the Commission is required to consult with the Regulatory Minister and representative bodies and participants in the regulated industry that the Commission considers appropriate. All decisions by the Commission are required to include a summary of the information on which the determination is based and a statement of the reasons for making the decision.

Under the *Utilities Commission Act*, any information gained by the Commission that could affect the competitive position of a licensed entity or other person, or is commercially sensitive for some other reason, is to be treated as confidential information. Any person performing a function under the *Utilities Commission Act*, or any relevant industry regulation

Act, would be guilty of an offence were such information disclosed otherwise than as authorised under a relevant Act.

Powers and functions of the Commission

The *Utilities Commission Act* sets out the Commission's main functions as well as the powers that the Commission may exercise in performing those functions. The key regulatory functions of the Commission in regulated industries (provided for in section 6 of the Act) include:

- to regulate prices charged by government monopoly businesses and regulated industries;
- to perform licensing functions;
- to develop, monitor and enforce compliance with, and promote improvement in, standards and conditions of service and supply;
- to make, and to monitor the operation of, codes and rules relating to the conduct or operations of a regulated industry or licensed entities; and
- to investigate and help resolve complaints relating to the conduct or operations of licensed entities.

In exercising its overall powers and carrying out its functions, the *Utilities Commission Act* obliges the Commission to have regard to the need:

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

The *Utilities Commission Act* only defines the Commission's overall functions and powers. Specific responsibilities of the Commission with respect to a particular industry are assigned to the Commission by provisions in relevant industry regulation Acts.

The relevant industry regulation Acts applying to the electricity supply industry are:

- the *Electricity Reform Act*; and
- the *Electricity Networks (Third Party Access) Act*.

In particular, the Territory's electricity network industry is declared to be a regulated industry (and the Commission assigned the role of regulator) by the *Electricity Networks (Third Party Access) Act*, and the Territory's electricity supply industry more generally is declared to be a regulated industry under the *Electricity Reform Act*.

The relevant industry regulation Act applying to the water supply and sewerage services industries is the *Water and Sewerage Services Act*, which came into effect on 1 January 2001. That Act and its associated regulations require and allow the Commission to undertake certain regulatory functions in the Territory's water supply and sewerage services industries for the provision of those services within a sole provider model.

Related regulatory entities

The Commission undertakes its regulatory functions in the Territory's regulated industries in conjunction with other regulatory entities, notably:

- the "Regulatory Minister", currently the Treasurer;
- the Safety Regulator – located in the Department of Industry, Business and Resource Development – who has responsibility under the *Electricity Reform Act* for monitoring and enforcing safety standards, and for establishing and enforcing safety-related standards for electrical equipment;
- the Chief Health Officer – located in Territory Health Services – who has responsibility under the *Water Supply and Sewerage Services Act* for monitoring and enforcing certain standards with respect to the water and sewerage industries; and
- the NT Ombudsman, who continues to have responsibility for investigating complaints from non-contestable electricity, water supply and sewerage services customers.

Membership of the Commission

Currently, the Commission is comprised of a single member, Mr Alan Tregilgas. The Act makes provision for the appointment of Associate Commissioners when deemed appropriate by the Regulatory Minister, although none have been appointed to date.

Mr Tregilgas was appointed Utilities Commissioner for a four year term commencing on 1 April 2000. In this role, he is also an *ex officio* Member of the Australian Competition and Consumer Commission and a member of the Utility Regulators Forum.

Mr Tregilgas performs the role of Utilities Commissioner part time. He remains a senior associate with Access Economics, the Canberra-based economic consultancy group.

Mr Tregilgas is a former senior Commonwealth, South Australian and Northern Territory Treasury officer. He also spent four years in the early 1990s as a utilities analyst with the Standard & Poor's Ratings Group in Australia and the Asia/Pacific region. For two years in the mid-1980s while with the Commonwealth Treasury, he represented Australia at the International Monetary Fund in Washington DC.

As an economic consultant since 1996, Mr Tregilgas has worked with Government agencies in six Australian jurisdictions, including the Northern Territory. He has also advised both the Queensland Competition Authority and the South Australian Independent Industry Regulator, as well as electricity reform units in South Australia and (recently) in Western Australia.

Mr Tregilgas holds a first class honours degree in economics from the University of Adelaide and a masters degree in economics from the Flinders University of South Australia.

Commission staffing and resources

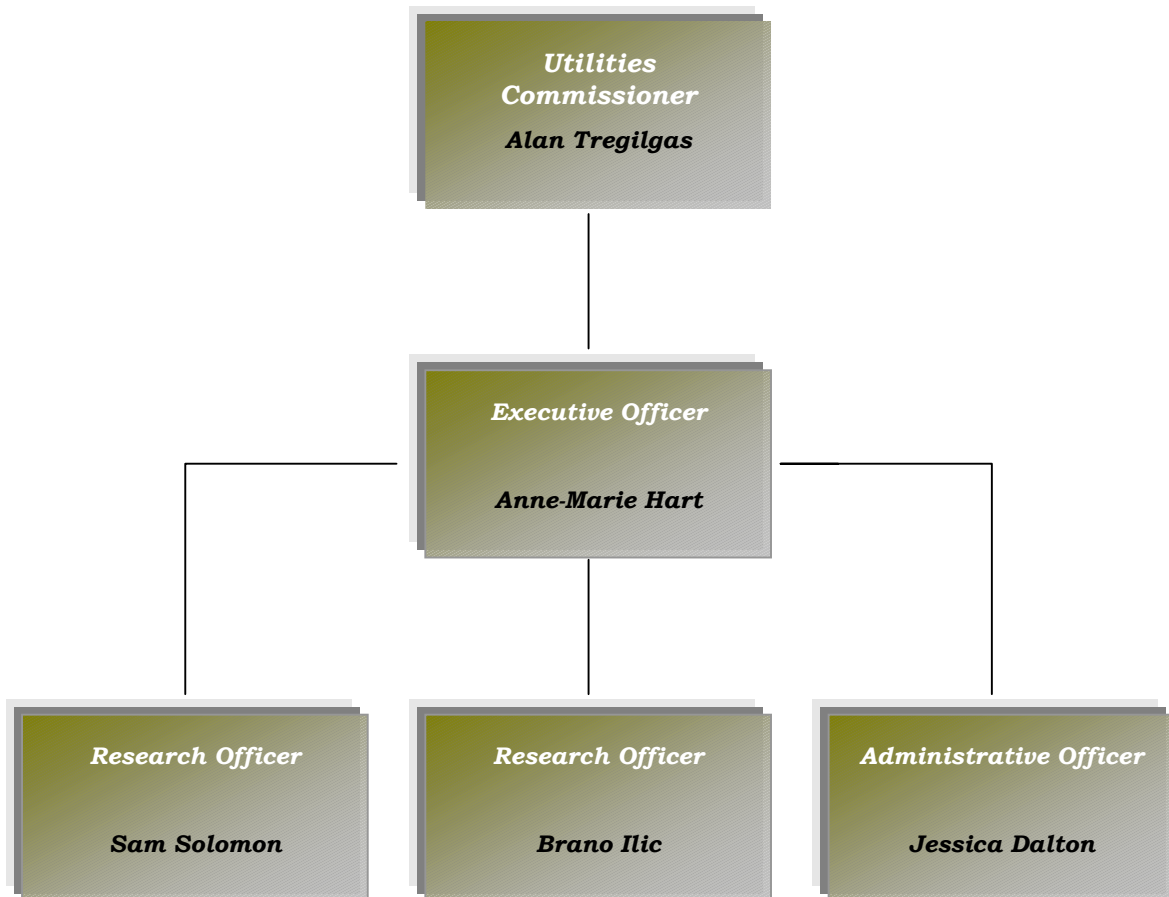
Four staff, employed within the meaning of the *Public Sector Employment and Management Act*, provide support to the Commissioner. The Commission's organisation chart is shown on the following page.

Advisers to the Commission

The Commission also has access to expert technical advice, through the engagement of consultants as detailed in Appendix 6.

Organisational Chart

Utilities Commission of the Northern Territory as at 30 June 2003



APPENDIX 2

DETERMINATIONS AND APPROVALS

Nature of decision	Type of decision	Effective period	Date of decision
System Control Charges	Approval	1 July 2002 to 30 June 2003	1 July 2002
Information Procedures	Approval	30 July 2002 to 30 June 2005	30 July 2002
System Control Technical Code	Approval	Until 30 June 2003	2 August 2002
Network Revenue Caps	Determination	1 July 2002 to 30 June 2003	1 April 2003
Network Access Tariffs	Approval	1 July 2003 to 30 June 2004	27 May 2003

APPENDIX 3

PUBLICATIONS AND REPORTS

During 2002-03, the Commission published the following reports:

September 2002	<i>Annual Report 2001-02</i>
December 2002	<i>NT Electricity Market 2001-2002</i>
December 2002	<i>Inquiry into the Electricity Networks (Third Party Access) Code – Issues Paper</i>
December 2002	<i>Annual Power System Review 2002</i>
March 2003	<i>Inquiry into the Electricity Networks (Third Party Access) Code – Draft Report</i>
April 2003	<i>Inquiry into the Electricity Networks (Third Party Access) Code – Final Report</i>

These publications can be viewed on the Commission's website: www.utilicom.nt.gov.au

In response to referrals from the Regulatory Minister in accordance with section 6(1)(g) of the *Utilities Commission Act*, the Commission also undertakes reviews for and provides advice to the Minister. Where required by the terms of reference issued by the Minister, the reports setting out the Commission's findings and recommendations remain confidential to government. During 2002-03, the Commission provided the following reports in confidence to the Minister:

September 2002	<i>Review of Experience with Contestability</i>
April 2003	<i>Jabiru Electricity Cost Review</i>
May 2003	<i>Water and Sewerage Price Structures Review</i>
May 2003	<i>Generation Pricing Oversight</i>

APPENDIX 4

EXPENDITURES AND RECEIPTS

This Appendix publishes the expenditures of the Commission that are funded directly from Consolidated Revenue, as well as the associated receipts. Expenditures (and associated receipts) funded by a consultancy arrangement between the Commission and the Essential Services Commission of South Australia associated with regulation of the Tarcoola-Darwin railway, and which commenced in the 2001-02 year, are published separately in Appendix 5.

NORTHERN TERRITORY UTILITIES COMMISSION EXPENDITURE BY CATEGORY OF COST

Category of Cost	2001-02 \$000	2002-03 \$000
PERSONNEL COSTS	350.6	388.2
Salaries and related costs	336.6	355.8
Superannuation	14.0	32.4
OPERATIONAL EXPENDITURE	181.3	163.5
Consultants Fees	161.1	123.4
Training & Study Expenses	3.4	14.0
Motor Vehicle Expenses	8.3	8.0
Official Duty Fares	1.6	7.6
Other Plant & Equipment	1.0	3.7
Document Production	2.0	2.2
Advertising	0.9	1.4
Travelling Allowance and Accommodation	1.3	1.1
Office Req & Stationery	0.7	0.4
Recruitment & Relocation Expenses	0.1	0.4
Memberships & Subscriptions	0.1	0.4
Freight	0.0	0.3
Library Services	0.6	0.2
Communications & IT Services	0.3	0.2
Entertainment	0.0	0.2
TOTAL EXPENDITURE	531.9	551.7

NORTHERN TERRITORY UTILITIES COMMISSION RECEIPTS BY ACCOUNT¹

Account	2001-02 \$000	2002-03 \$000
Fees and Charges	192.1	177.2
Licence Application Fees	4.0	0.0
Electricity Licence Fees	143.1	132.2
Water and Sewerage Licence Fees	45.0	45.0
TOTAL REVENUE	192.1	177.2

¹ Section 19 of the *Utilities Commission Act 2000* provides that, unless otherwise directed by the Treasurer, fees and other monies received by the Commission are paid into the Consolidated Revenue Account.

APPENDIX 5

PROVISION OF CONSULTANCY SERVICES TO ESCOSA

On 16 July 2001, the Regulatory Minister authorised the Commission to undertake the function of assisting the Essential Services Commission of South Australia (ESCOSA)² with its role as regulator of the Tarcoola-Darwin railway. This was an exercise of the Minister's power under section 6(1)(h) of the *Utilities Commission Act*.

Through a consultancy contract entered into between the Commission and ESCOSA, the Utilities Commissioner has been engaged to work on a part-time basis as Railway Adviser to ESCOSA. In this capacity, the Commissioner has been assigned responsibility for:

- prior to any negotiations taking place for access to the new railway – drafting pricing and service guidelines for use by the track operator and any appointed arbitrator and recommending any pricing-related determinations; and
- once access negotiations commence – drafting the advice or directions required under the *AustralAsia Railway Access Code* relating to operation of the access negotiations provisions of the Code as well as implementation of ESCOSA's guidelines.

This arrangement concludes on 31 March 2004.

In turn, and only for the duration of the contract with ESCOSA:

- the income received by the Commission from ESCOSA is paid into Consolidated Revenue, with the Commission's budget allocation being increased by the pre-GST amount;
- up to 50% of the pre-GST amount is allocated to fund travel expenses between the Commission's office in Darwin and ESCOSA's office in Adelaide; and
- the remainder of the pre-GST amount received is paid as a temporary allowance to the Commissioner as sole service provider under the contract (with the days involved being additional to the days the Commissioner is contracted to work for the Commission).

The expenditures funded by these arrangements during the 2002-03 financial year, and associated receipts, are set out below:

ESCOSA-RELATED EXPENDITURE AND RECEIPTS

<i>Pre-GST amounts</i>	2001-02 \$000	2002-03 \$000
Consultancy fees	46.6	48.0
Total Revenue	46.6	48.0
Salaries and Related Costs	22.4	24.0
Official Duty Fares	14.8	15.5
Travelling Allowance & Accommodation	6.9	7.2
Total Expenditure	44.2	46.7

Expenditure and receipts differ between the two years in the Table mainly because the 2001-02 arrangements only applied for 11½ months of the year.

² Formerly the SA Independent Industry Regulator (SAIIR).

APPENDIX 6

ADVISERS TO THE COMMISSION

Section 14 of the *Utilities Commission Act* authorises the Commission to engage consultants when it considers necessary and appropriate.

Appointed advisers

Legal advisers

In May 2002, the Commission tendered for the provision of legal services through the Department of Justice. The scope of the legal services required included general legal advice, commercial work, preparation of electricity licences and conduct of litigation, as well as specialised advice on legislative and policy development and change.

Morgan Buckley Lawyers, Darwin, in association with Minter Ellison Lawyers, Adelaide, were the successful tenderers.

Accounting & technical advisers

In August 2000, the Commission tendered for the provision of accounting and technical services through the Department of Corporate & Information Services.

Ernst & Young, Darwin, were the successful tenderers. This contract expired in November 2002.

In February 2003, the Commission tendered for a panel of advisers who could be called upon as necessary to provide specialist pricing, accounting and technical advisory services accounting through the Department of Corporate and Information Services.

The successful tenderers were:

- Network Economic Consulting Group Pty Ltd;
- Marsden Jacob Associates Pty Ltd;
- Electric Power Consulting Pty Ltd; and
- East Cape Pty Ltd.

Consulting services provided in 2002-03

In 2002-03, the Commission used the services of the following consultants. The costs for the year totalled \$123,354. The maximum amount paid to these consultants was less than \$50,000 and the minimum amount was greater than \$10,000.

Morgan Buckley

During 2002-03, the Commission received advice from Morgan Buckley in relation to the following matters:

- drafting amendments to the *NT Electricity Ring-fencing Code*;
- the review of the *Network Access Code*;

- the procedures for conduct of reviews; and
- the scope of the Commission's price regulation powers.

Ernst & Young

During 2002-03, the Commission received advice from Ernst & Young in relation to the following matter:

- the review of the prospective trends in the capacity and reliability of the Territory's power system relative to projected load growth.

Network Economic Consulting Group Pty Ltd

During 2002-03, the Commission received advice from Network Economic Consulting Group Pty Ltd in relation to the following matters:

- the review of costs associated with supplying electricity to the Jabiru township; and
- the development of a framework for the oversight of wholesale generation pricing in the absence of effective competition.

Marsden Jacob Associates Pty Ltd

During 2002-03, the Commission received advice from Marsden Jacob Associates Pty Ltd in relation to the following matter:

- the review of Power and Water's price structures for the provision of water supply and sewerage services.

Electric Power Consulting Pty Ltd

During 2002-03, the Commission received advice from Electric Power Consulting Pty Ltd in relation to the following matter:

- the review of the energy loss factors calculated by Power and Water under Schedule 13 of the *Network Access Code*.

East Cape Pty Ltd

During 2002-03, the Commission received advice from East Cape Pty Ltd in relation to the following matter:

- the review of the network price regulation methodology used in the first regulatory control period and the canvassing of modifications to the methodology for application during the second regulatory control period.