

Mr Barry Chambers
Chief Executive Officer
Power and Water Authority
GPO Box 1921
DARWIN NT 0801

Dear Mr Chambers,

RE: RING-FENCING CODE

Each of the licences granted to the Power and Water Authority (“PAWA”) with effect from 1 April 2000 includes an identical “Compliance with regulatory instruments” condition (clause 9 in the networks, generation and retail licences, and clause 10 in the power system control licence).

One of the requirements of this clause is that PAWA as the licensee must:

- “(b) comply with all applicable provisions of the Ring-Fencing Code after such a code is made by the Utilities Commission...” (Network Licence, clause 9.1).

On 3 February 2000, the Interim Utilities Commissioner provided PAWA with a document entitled “Draft Ring-Fencing Guidelines”. Based on that draft, the Commission has decided that the *Ring-Fencing Code* to apply from 1 April 2000 will be that set out at Attachment A.

The Commission acknowledges, however, that:

- parties (including PAWA) have not had the opportunity to fully consider the *Code* as now promulgated by the Commission—although PAWA did have the benefit of the draft Guidelines which the *Code* closely follows; and
- the *Code* is largely specified in terms of “targeted outcomes”—with the Commission leaving it to PAWA management in the first instance to propose the management and process/system steps necessary within PAWA to achieve the specified outcomes.

The Commission therefore proposes that the attached *Code* should only be in place for six months, in which time a replacement *Code* will be developed which:

- has been developed through a public consultation process; and
- details the main management processes and system which are appropriate for giving effect to the agreed ring-fencing outcomes.

To commence the public consultation process, the Commission requires PAWA to develop the policies, practices and procedures which PAWA considers will most cost-effectively give effect to the ring-fencing outcomes set out in the attached *Code*. Specifically, within 3 months of issue of the licences, PAWA is required to

submit its proposed ring-fencing policies, practices and procedures to the Commission for review and approval in the form of a replacement Code. In doing so, PAWA is invited to comment on the appropriateness of both the spirit and the letter of the attached *Code* as a basis for a replacement Code.

Within two weeks of receipt of PAWA's proposals and comments, the Commission will issue a discussion paper setting out its own analysis of PAWA's proposals, and invite public comment on both PAWA's and the Commission's views. The Commission's paper will canvass possible penalties for breaches of the *Code*.

As PAWA has been previously advised, in judging whether management's proposals are likely to be effective in achieving the nominated ring-fencing outcomes, the Commission will be influenced by a number of considerations, including:

- the extent to which the processes proposed are transparent, not only to the Commission but to affected third parties; and
- the extent to which there are clear accountabilities within PAWA for the effectiveness of ring-fencing, with responsibilities in this area being clearly delegated to nominated senior officers.

A period of six weeks will be allowed for submissions from interested parties.

Within four weeks after that, the Commission will settle on a replacement Code taking into consideration views put to it by both PAWA and interested third parties. PAWA will be invited to comment on a draft of the replacement Code before it is finally approved by the Commission.

For your information, a copy of this letter and the attachment will be put on the Commission's website shortly.

Yours sincerely,

Alan Tregilgas
Utilities Commissioner
14 April 2000

RING-FENCING CODE

1. For each *Prescribed Business* defined in the columns of Table 1, each of the specified requirements with respect to each *Related Business* defined in the rows of Table 1 are to be observed, where A, B, C and D refer to the following requirements:

A. Separation of financial accounts

2. The Licensee must keep the accounts for the *Prescribed Business* separate from a *Related Business* operated by the Licensee.
3. For the purpose of achieving the objective described in clause 2:
 - (a) the Licensee must determine:
 - (i) all of its income, expenditure, assets and liabilities relating to the *Prescribed Business*; and
 - (ii) where necessary, any item of income, expenditure, assets or liabilities of the Licensee which relates only in part to the *Prescribed Business*;
 - (b) the Licensee must ensure that its accounts and records are in such form as to enable:
 - (i) all of its income, expenditure, assets and liabilities relating to the *Prescribed Business* to be properly recorded and distinguished from the income, expenditure, assets and liabilities of the *Related Business*; and
 - (ii) where necessary, any item of income, expenditure, assets or liabilities of the Licensee which relates only in part to the *Prescribed Business* to be appropriately apportioned to that business;
 - (c) the Licensee must prepare from those accounts and records an audited profit and loss statement and a balance sheet in respect of each financial year, each of which give a true and fair view of its profit and loss and balance sheet relating solely to the *Prescribed Business*; and
 - (d) the Licensee must provide to any person copies of the profit and loss statement and balance sheet prepared in accordance with sub-clause (c), upon payment to the Licensee by that person of the fee approved for the purpose by the Commission.

B. 'No cross-subsidisation' requirement

4. The Licensee must use all reasonable endeavours to ensure that any goods or services that the *Prescribed Business* provides to, or receives from, a *Related Business* operated by the Licensee when conducting the *Prescribed Business* are provided or received on an arm's length, commercial basis'.
5. Until agreement can be reached on alternative mechanisms for determining whether particular goods or services have been provided or received by a *Prescribed Business* from a *Related Business* on an arm's length, commercial basis, such questions will be decided by the Commission on the basis of the Commission's opinion of the matter.

C. ‘Chinese walls’ requirement

6. The Licensee must use all reasonable endeavours to ensure that, unless otherwise authorised by law or regulations, only officers and employees engaged in the *Prescribed Business* have access to, or possession of, information in relation to that business’s past, present and future dealings with suppliers in upstream markets and customers in downstream markets.

D. ‘Competitive neutrality’ requirement

7. The Licensee must use all reasonable endeavours to ensure that any goods or services the *Prescribed Business* provides to, or receives from, any third-party operating in competition with a *Related Business* operated by the Licensee are provided or received on a basis that takes no account of the actual or likely competitive or financial impact of the transaction upon that *Related Business*.

8. Until agreement can be reached on alternative mechanisms for determining whether particular goods or services have been provided or received by a *Prescribed Business* from a third party operating in competition with a *Related Business* on a basis that takes no account of the competitive or financial impact of that transaction upon the *Related Business*, such questions will be decided by the Commission on the basis of the Commission’s opinion of the matter.

Utilities Commission
14 April 2000

Table 1: Specific ring-fencing requirements

“ <i>Related Business</i> ”:	“ <i>Prescribed Business</i> ”			
	Network	System Control	Franchise retail ^(a)	Generation
Network		A	A,B	(b)
System Control	A		A,B	(b)
Franchise retail	A,B	A,B		(b)
Generation	A,B,C,D	A,B,C,D	A,B,C,D	
Contestable retail	A,B,C,D	A,B,C,D	A,B,C,D	A,B,C,D
Other non-power monopoly businesses ^(c)	A	A	A	A
All other contestable businesses	A,B,C,D	A,B,C,D	A,B,C,D	A,B,C,D

^(a) that part of the Licensee’s business authorised by a Retail Licence which relates to the sale of electricity to non-contestable customers

^(b) not applicable; the required ringfencing is achieved by the requirements on the related monopoly businesses

^(c) water services and waste water services