



20 November 2008

The Executive Officer  
Utilities Commission  
GPO Box 915  
DARWIN NT 0801

EMAIL: [utilities.commission@nt.gov.au](mailto:utilities.commission@nt.gov.au)

Dear Sir/Madam

### **NTMEU Comments on Revised Draft Ring-Fencing Code**

The Northern Territory Major End Users (NTMEU) welcomes the opportunity to provide its views on the Utilities Commission's (UC) Review of the Northern Territory Electricity Ring-Fencing Code: Revised Draft Code. The NTMEU applauds the UC's review process, as it has provided stakeholders with ample opportunity to present views and to debate with the Commission. This interactive process has been facilitated by well-presented arguments, which comprehensively cover the range of views present.

The NTMEU considers that this Review should be considered in the context that:

- Power and Water Corporation is a vertically-integrated monopoly business and is likely to remain so in the foreseeable future as existing barriers to new entrants in generation and retail are effectively very high, and made so in part by the strategies used by Power and Water to maintain its pre-eminence as the electricity provider in the Territory.

C/- Mr Michael Williams, Northern Cement P/L  
PO Box 39631 Winnellie NT 0821  
Phone: (08) 8984 0600  
email: [Michael.Williams@adbri.com.au](mailto:Michael.Williams@adbri.com.au)

- The current ring-fencing code is not effective and is not consistent with best regulatory practice in the National Electricity Market or in the Western Australian Electricity Market.
- The timely review of the NT's ring-fencing code is critical as it parallels the UC's current review of the network pricing.

The NTMEU considers, with respect to the UC's review of draft ring-fencing code, the following points:

1. It agrees with the Commission that "it is proper and necessary for it to review the Code now and to bring it up to best regulatory practice". It is particularly essential at this time as the Commission is currently undertaking the network pricing review.
2. It agrees with the Commission that the scope of the new revised Code is consistent with best practice as adopted in other Australian jurisdictions. Many NTMEU members operate in other Australian jurisdictions and consider it essential that the Territory updates its ring-fencing code to best practice levels.
3. It agrees with the Commission on the requirement to prepare formal contracts for the supply of services from the regulated part of the business to an unregulated part, and to have the terms of these contracts approved by the Commission. Related party contracts are also common in other jurisdictions, and experience has shown the ability of network businesses to undertake non-arms length transactions to either raise returns from customers paying for regulated services, or to impede competition from retail rivals. It is essential that the NT's Code contain provisions to pierce such corporate veils. Indeed, the National Gas and Electricity Legislations now contain such provisions. Better transparency leads to more efficient pricing and ensures that tariffs are fair and reasonable.
4. All other Australian jurisdictions give proper regard to the public interest and enable regulators to weigh up the public interest vis-à-vis the regulated interest. It should be remembered that PWC is a vertically integrated monopoly business which currently enjoys very high barriers to new generator and retail competition. PWC should not be provided with unfettered freedom to hide behind "confidentiality" provisions.
5. It is noted that large sections of the consumer base have price caps set for electricity consumption. These prices are "fully bundled" and incorporate significant amounts for services which are theoretically competitive (ie generation and retail), but for which PWC is still the sole provider. With such a large element of the price caps including

regulated charges (ie network services) it is feasible that PWC can manipulate the costs within the price caps so that larger elements of the network charges are levied on “contestable” consumers. The Commission has the power to ensure that by clear ring fencing and supervision of tariff setting, it can ensure that contestable consumers are not cross subsidizing “regulated” consumers and vice versa.

The NTMEU will be happy to elaborate on the above issues, as necessary.

Yours sincerely

Michael Williams  
Chairman  
Northern Territory Major Energy Users