

Our Ref: UTCdoc2012/529
Your Ref: D2012/645182

Mr Andrew Macrides
Managing Director
Power and Water Corporation
GPO Box 1921
DARWIN NT 0801

Dear Andrew

RE: REVOKE AND RESET OF THE 2009 NETWORK PRICE DETERMINATION

I refer to your letter dated 14 December 2012 requesting that the Commission exercise its powers to revoke and reset a revenue or price cap under clause 71(c) of the Electricity Networks (Third Party Access) Code (the Code).

The Commission notes that the specific matters detailed in your letter are directly relevant to the Commission's current consideration of network pricing arrangements to apply from July 2014. As you are aware, the Commission released its Statement of Approach in relation to that process earlier this month.

The Commission considers that further information is required from PWC before a revocation or reset of the 2009 Networks Pricing Regulatory Reset (2009 Reset) could be considered.

Clause 71(c) of the Code states that the Commission may revoke or reset a revenue or price cap if it appears to the Commission that:

"there were extraordinary developments with respect to any of the key factors identified in clause 68 which, in the opinion of the regulator, were outside the network provider's control".

To justify any action in accordance with **clause 71(c)** of the Code, the Commission must satisfy itself in relation to both of the matters highlighted above.

1. Extraordinary Development

In the context of your letter, the Commission considers an *extraordinary development* to be an exceptional, unusual or remarkable circumstance which has occurred since the 2009 Reset and has affected the on-going commercial viability of the network provider (with reference to clause 68(j) of the Code). The Commission requires clarification of the nature of the *extraordinary development* PWC suggests has occurred.

Your letter mentions three main reasons why the on-going commercial viability of the network provider is at risk, including concerns regarding the value of the regulated asset base and capital and operating expenditure required following the responses to the Davies Report and related Government policy initiatives as a result of the Casuarina zone substation failures.

The Commission seeks further advice from PWC as to the relevance of the regulated asset base matter under clause 71(c). PWC's concerns regarding this matter may be more relevant to **clause 71(b)** of the Code (material error in the setting of the cap), in which case further information would be required from PWC specifically addressing the reasoning applied in the

2009 Reset Final Determination and identifying the material error that occurred in that Determination. The Commission notes that, while there may be concerns with the value of the regulated asset base, unless a material error in the 2009 Reset can be found, these concerns might better be addressed through the 2014 Network Price Determination, as highlighted in the Commission's recent Statement of Approach.

As foreshadowed in the 2009 Reset Final Determination, the Commission may consider a reset of the price cap to take account of the increased capital and maintenance expenditure as a result of Government decisions responding to the findings of the Davies Report regarding the Casuarina zone substation outages. The Commission notes PWC's comment that a revisiting of network tariffs, once the Government's decisions in response to the Davies Report were known, is well overdue. However, as identified in the 2009 Reset Final Determination, the reset would be considered '*upon application by PWC and following a public review by the Commission*'. The Commission interprets PWC's letter as constituting such an application.

2. Outside the Network Provider's Control

As discussed above, to consider a reset of the price cap, the Commission needs to be satisfied that the extraordinary development was outside the network provider's control. In this regard, the Commission's interpretation is that the extraordinary development should be completely outside the network provider's control. The Commission requires further information that the Casuarina zone substation outages, related Government initiatives and subsequent additional capital and operational expenditure were outside the network provider's control.

In summary, the Commission seeks clarification and further information from PWC on the basis of its application to revoke and reset the 2009 Reset Final Determination, particularly as to whether the application is being made in relation to:

- a. an *extraordinary development* that has occurred since the 2009 Final Determination that was *outside the network provider's control* (**clause 71(c)**) ; and/or
- b. a material error in the setting of the price cap (**clause 71(b)**).

Upon further clarification from PWC on the grounds for considering a revocation and reset of the 2009 Reset, Commission staff will dialogue with PWC on further information that will be required as part of the Commission's review process, which will be undertaken in a transparent and consultative manner, and as expeditiously as possible.

Please contact Vanessa Sutcliffe, Director Utilities Commission on (08) 8999 5480 should you wish to discuss this matter further.

Yours sincerely



Dr Patrick Walsh
Utilities Commissioner
19 December 2012