



## **Northern Territory Major Energy Users**

**Utilities Commission's Review of Options for the development  
of a retail price monitoring regime for contestable electricity  
customers**

**Comments on the Issues Paper**

March 2010

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## **EXECUTIVE SUMMARY**

The Northern Territory Major Energy Users (NTMEU) welcomes the opportunity to provide comments on the Utilities Commission Issues Paper **“REVIEW OF OPTIONS FOR THE DEVELOPMENT OF A RETAIL PRICE MONITORING REGIME FOR CONTESTABLE ELECTRICITY CUSTOMERS”**. The NTMEU would also wish to participate and contribute to the further assessments that are suggested in this submission.

The NTMEU members have all commented that the pricing approach by the monopoly power provider in the NT (Power and Water Corporation – PWC) has been typified by a “take it or leave it” approach to offers for supply and the terms and conditions that accompany the offers. Any requests to be provided with sufficient additional information on which to assess the reasonableness of the offer, have been denied.

As a result consumers have not been able to assess the appropriateness of the offers made, other than to compare the offer with prices for power supplies in other jurisdictions, which show that the NT has the highest prices for power in the country. The refusal by PWC to provide any meaningful information has prevented consumers and the UC from assessing whether PWC is efficient in the provision of the services it provides.

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The NTMEU fully supports the approach by the UC to develop a set of Rules which will provide useful information by PWC so that consumers can better assess the pricing structures used by PWC and the efficiency of PWC as a monopoly service provider. The NTMEU has concerns that any relaxation of the requirements for full information disclosure will be to the detriment of consumers and allow PWC to continue with its current unacceptable practices.

The NTMEU notes that the UC is proposing some light-handed approaches to price monitoring. The NTMEU considers that as PWC is a monopoly and has already treated consumers accordingly, a light handed approach is not appropriate. Further, the NTMEU considers that price monitoring without the ability to effect an immediate response when the regime is failing, will not achieve the outcomes expected by consumers.

The NTMEU fully supports the UC approach and as a result has provided a detailed response to the issues raised by the UC and responses to the questions raised by the UC in its paper. Despite this support, the NTMEU considers that more reforms are needed to ensure effective outcomes for consumers.

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The NTMEU is prepared to discuss the aspects of this submission in more detail if the UC requests.

The structure of this response provides a summary of the responses to specific questions in the Conclusion section of the submission. The arguments supporting the responses to the questions are provided in the earlier sections of the submission.

## **1. Introduction**

### **1.1 About NTMEU**

The Northern Territory Major Energy Users (NTMEU) welcomes the opportunity to provide comments on the Utilities Commission's "Review of Options for the development of a retail price monitoring regime for contestable electricity customers". This review is being undertaken at the request of the Treasurer for:

- a) an effective retail price oversight framework for contestable customers, and
- b) the associated reporting and disclosure arrangements.

This is a very significant policy review and the Utilities Commission recommendations will have a significant impact on the continued viability of major energy using entities, and consequently on their existing investments and potential investment plans, as well as on their ability to create further employment opportunities in the Territory.

The NTMEU comprises the larger end users of electricity in the Northern Territory and includes representation of the energy interests of business from

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the manufacturing, resources, services and hospitality industries including the following companies: Northern Cement Limited, NT Airports, Intercontinental Hotel Group and SkyCity.

The NTMEU has been established by the larger businesses operating in the Northern Territory to provide informed comment on the Territory's evolving energy policy and regulatory processes. NTMEU members cover a wide range of industries: from manufacturing to tourism, resources and healthcare. Member companies have identified that there are potentially more commercial options for providing essential services of electricity (and gas) than currently apply in the Territory, and are prepared to work with the Government to improve the current and future energy supply arrangements in the Territory.

The NTMEU recognises the unique nature of the Territory – its relatively low population and population density, its large area and its remoteness from other Australian markets – but it sees that large amounts of gas reserves nearby, and the proximity of northern (overseas) markets can provide a competitive edge for Northern Territory businesses, which in turn drive additional downstream investments and expand employment opportunities in the Territory. The key critical factor in achieving these potential outcomes is access to a competitive, efficient and sustainable energy sector in the Territory.

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Accordingly, NTMEU member companies' main objective on energy is to promote access to long-term, efficient, sustainable and competitively-priced energy (electricity and gas) supplies. We have identified a key interest in the competitive **cost** of energy supplies (commodity, network services and transaction costs) as this represents a significant cost element in each member's business operations.

Electricity (and gas) is an essential source of energy required by each member company in order to maintain operations, and a failure in the supply of this energy source will cause energy businesses affected to cease production and/or suffer loss. Thus the **reliable supply** of electricity (and gas) is an essential requirement of each member's business operations.

With the use of highly sensitive equipment necessary to maintain operations at the highest level of productivity, the **quality** of energy supplies has become increasingly more important, with the need for a focus on improved service performance of the distribution networks. Variation of electricity voltage, especially voltage sags, momentary interruptions and transients (and also of gas pressure) by even small amounts, now has the ability to shut down critical elements of many production and/or service processes.

Each of the businesses represented in the NTMEU has invested considerable capital in establishing their operations and in order that they can recover the

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capital costs invested, long-term **sustainability** of energy supplies is paramount. If sustainable supplies of energy are not available into the future, investments made by energy users quickly lose their value.

Accordingly, the NTMEU has a keen interest in addressing issues that impact on the **cost, reliability, quality** and the long-term **sustainability** of member companies' electricity (and gas) supplies.

The NTMEU also recognises that electricity supplies (and to a lesser extent, gas supplies) are an essential service. There is no element of today's modern society that does not rely on electricity, whether it is for motive power or for lighting. The alternatives to using electricity for these needs are universally environmentally unacceptable, less safe, or commercially less viable. The NTMEU does not accept the contention made by some that there are alternatives to using electricity to manage the demand for electricity supplies. This means that, by and large, the electricity supply has to match the needs of consumers, rather than consumers modifying their power usage requirements for the benefit of the electricity supply arrangements, although where modifications in electricity consumption can provide assistance in achieving the goals of consumers (in terms of cost, reliability, quality and sustainability) fair value must be given to those consumers who can, and do, modify their usage to provide the benefit.

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The NTMEU has identified that compared to equivalent operations in the rest of Australia, the cost of energy in the Territory is significantly but unnecessarily higher and this creates an impediment to the entry of new downstream investments (and also to the expansion of existing investments), especially for manufacturing activities. This minimises the potential for NT-based industry to export to other parts of the country or overseas, or to develop competitive import-replacement opportunities, as the comparative energy prices clearly favour importation to domestic manufacture.

Equally, the NT has the potential to be a destination for increased tourism, but the high comparative energy prices are a deterrence, as they represent a significant proportion of input costs.

## **1.2 About the need for this review**

This review is being undertaken at the request of the Treasurer for:

- a) an effective retail price oversight framework for contestable customers, and
  - b) the associated reporting and disclosure arrangements.
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The Treasurer's terms of reference also required the Commission to have regard to other considerations, such as the practical implementation requirements, treatment of commercially sensitive data and interstate experience of price oversight in contestable markets. This review is especially welcomed by the NTMEU and, no doubt, by all contestable customers in the Territory.

Power and Water Corporation (PWC) is the monopoly electricity supplier in the Territory. It is a vertically integrated electricity supplier, as well as having sole access to gas supply for the foreseeable future. Hence, PWC is a powerful monopoly wholesale and retail electricity supplier, and has operated accordingly. There is little transparency in its operations, thereby preventing contestable customers from replicating and deriving their electricity tariffs to ensure that they are economically efficient and are cost reflective. Related party transactions are also preventing transparency in costs pass-throughs between the vertically integrated businesses. Negotiations between contestable customers and PWC have tended to be unproductive, and dispute resolutions have been subject to delays and are plainly unproductive.

There is no innovation in electricity contracts, and arrangements, unlike the experience in other Australian electricity markets.

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The outcomes have meant that Northern Territory contestable customers have had to accept economically inefficient tariffs that are not cost reflective and are the highest in Australian electricity markets.

This submission responds to the issues identified by the UC's Issues Paper.

### **1.3 Summary of Issues Raised by Contestable Customers**

The UC's Issues Paper provides a good summary of the issues raised by contestable customers, particularly the concerns with respect to historically-based cost plus bundled pricing, inability to conduct proper negotiations, and a 'take it or leave it' attitude on the part of PWC. Also of concern, have been the onerous confidentiality clauses surrounding contracts, and the lack of obligation by PWC with respect to the quality and reliability of supply. In short, the experience of contestable customers with UC has not been a commercially and mutually beneficial relationship, with the result that electricity costs have become unnecessarily and unreasonably major cost imposts, thereby limiting investment and employment growth opportunities in the Northern Territory.

The NTME had previously put to the UC the need for:

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- More transparency in the contractual arrangements between PWC Generation, PWC Network, and PWC Retail to enable terms and conditions to contestable customers to be assessed for their reasonableness; such arrangements have the potential to encourage a new retail entrant to provide competition.
- The establishment of an effective dispute resolution mechanism via the UC that is also timely and efficient.

## **2. A Competitive Electricity Industry Structure is needed in the NT**

Although the current review is to consider the best options for price monitoring by the UC in regard to offers made by PWC to contestable customers, the NTMEU points out that price monitoring can only be seen as a third best option for consumers. The best option is that there is instituted a working competitive regime in the supply of power in the NT.

Prior to the introduction of the current regime, the NT had an effective regulatory regime where the government oversaw the pricing approaches by the forerunner of PWC. This gave government the ability to assess the pricing of power and to make decisions about the balance between costs and prices, and allowed consumers to discuss pricing provided by the forerunner of PWC. If a consumer was dissatisfied with a power pricing offer, it could take the issue to government and seek adjustment.

Whilst competition is better than government regulation, at least with government regulation, consumers have an ability to complain. Under the current regime there is less ability to seek restitution, even though PWC is still a monopoly, and this is made worse for consumers as there is less oversight.

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The proposal under review is marginally better than the current regime but it still allows PWC a large amount of latitude to act as a monopoly with little oversight.

## **2.1 The best outcome for consumers**

The NTMEU's vision for the Northern Territory's electricity industry is for the creation of a truly competitive electricity industry structure in the Territory, rather than the current effective monopoly structure. As competition is considered to be the best driver in achieving economically efficient outcomes, such an outcome will provide the basic under-pining for the stronger development of the Territory's economy by enhancing more downstream investments and employment.

## **2.2 The reality is that NT has the worst outcome**

Unfortunately for NT consumers, the rhetoric behind the proposed changes of the power market structure has not resulted at all. In fact consumers are now worse off under the current regime than under the government regulated regime as the moves to deliver a competitive structure have allowed PWC to be a monopoly with less oversight than under the regulated market approach used previously.

In practice there is currently only a single vertically integrated power supply company – Power and Water Corporation – which holds the licences to operate

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the largest generators, to be the network service provider and is the single energy retailer in the Northern Territory. The fact there is no other generator or retailer prepared to enter the NT market is testament to the clear lack of competition in the NT power market. This is in part caused by a lack of transparency in pricing and in the rules governing transactions,

It is worth noting that in general any dominant supplier can frustrate competitive pressure and the entry of new players by adopting anti-competitive conduct or rules for access and pricing. It can also extract economic rents across the whole vertically integrated business. This is what PWC has achieved.

### **2.3 Economic regulation would be a second best outcome**

In the absence of competition, economic regulation is a better outcome than effectively an unfettered monopoly, which is what the NT now has in regard to power supplies.

Economic regulation would enable government to oversight PWC practices, require changes and improvements and to allow dissatisfied consumers the right to have their grievances with PWC addressed. Currently, the network element of the PWC business is regulated in terms of price and access, and this has been positive.

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There is no reason why a similar approach could not be introduced to control the monopoly activities of PWC in what is intended to be a competitive environment. Until competition in the so called “contestable” elements (generation and retail) becomes an actuality in the NT, economic regulation of these elements – while they remain a monopoly – is preferable than anything delivering a lesser outcome.

Regulation of PWC by government of the PWC “contestable” elements would recognise that the current arrangements are inadequate for achieving the goal of developing an economically efficient power market in the NT, and this could not be implemented until the NT government introduces the changes foreshadowed in 2008 when it sought input into its draft policy paper on the new legislative framework for the NT power supply industry.

#### **2.4 Monitoring is only a third best option**

Monitoring a monopoly is only marginally better than allowing a monopoly free rein.

Monitoring can take two main approaches – one with action and one without action. Effectively monitoring without the ability for the monitor to take action, is no better than watching a thief carry out a robbery, and when the thief has departed, telling your neighbour weeks later you have been robbed.

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In contrast monitoring with the ability to take action is more akin to seeing the thief in action and calling the police immediately so they can apprehend the thief before he departs.

The NTMEU considers that if monitoring is deemed to be an acceptable solution to addressing the issue of PWC monopoly approach to its customers, then the monitoring must provide for the monitor to take immediate action as soon as it is apparent action is needed.

### **3. Aspects of a monitoring regime**

A well developed monitoring program can have a number of features which makes it more effective

#### **3.1 Customer Complaint Mechanism for Contestable Customers**

The NTMEU agrees with the UC's reasons for contestable customers not using the existing customer complaint mechanism viz:

- A lack of certainty about what constitutes contrary conduct
- The relative stringent criteria that must be met before the Commission can become involved in a complaint
- The formality of the investigation process the Commission must follow.

An additional reason is that the UC has no powers to act and can only make recommendations to the Minister on its findings. The Minister has been unwilling to act as Electricity Market Reform reviews have always been "impending" and that it would be inappropriate to act prior to the Review findings.

The bottom line is that contestable customers are exposed to significant legal and other transactions costs with respect to the potential use of the existing

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mechanism, and the likelihood they will achieve an acceptable outcome is modest at best.

### **3.2 Further Reviews and Information Required**

The NTMEU supports the UC's suggestion that more information and review are required to ensure that the regulatory framework is effective in meeting the objections of the NT's legislation in providing for competitive and efficient outcomes.

In particular, the NTMU agrees:

- PWC should produce regulatory accounts for its generation business unit in compliance with PWC's licence, conditions and the requirements of the Ring-Fencing Code.
  - There should be a review of PWC's accounting and cost allocation procedures, which were approved in 2001, but which were not reviewed in 2004 as scheduled
  - Public disclosure of accounting and cost allocation methodologies must be made
  - Reporting templates should be reviewed
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- There should be development of regulatory guidelines
- There should be collation and analysis by the UC of all data relevant to the NT power system capacity and performance in a single document, including an annual statement of opportunities, similar to that produced by NEMMCO.

### **3.3 Price Monitoring-Objectives and Principles**

The NTMEU supports the following:

“...the Commission considers that the objective of a price monitoring regime in the Territory is to provide a level of protection to contestable customers through scrutiny and monitoring of prices, costs and performance of firms or markets where effective market competition is not fully developed and market power is suspected to arise. Price monitoring should:

- Provide contestable customers with a level of protection against potential or perceived market power exercised by PWC; and
  - Facilitate competition.” (UC, p.21).
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PWC is the monopoly supplier at the wholesale and retail level, and therefore has market power and, as like all corporations, has the obligation of maximising returns to shareholders. So, irrespective of whether PWC has “potential or perceived market power”, it is expected that it will maximise returns to its shareholder and operate accordingly. In other words, it will exercise its market power in order to maximise the return to its shareholder. It must be recognised that this is an obligation of the PWC Board members and of its staff. Therefore, to expect that PWC will not exercise its market power, is a false assumption, and if it did, then it would be an abrogation of the primary task of its Board and staff.

The NTMEU, therefore, considers that maximising information transparency – e.g. via surveillance of PWC’s costs, prices and performance, in conjunction with analyses of efficient costs and efficient targets (using Key Performance Indicators) and benchmarking (internally and externally) will assist in protecting consumers against inefficient pricing. There will also be a need to ensure that unreasonable terms and conditions are not set by providing for a dispute resolution mechanism via the UC.

If the monitor is aware that PWC activities are not being performed to the optimum level of efficiency, then the monitor must have the ability to implement remedial actions, and to ensure that these actions have been taken.

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The second key aspect of an effective price monitoring regime is to ensure, through transparency of costs and prices, the potential for the development of wholesale and retail competition.

### **3.4 Economic Principles and Implementation Principles of Price Monitoring**

The NTMEU agrees with the views of NERA and the Productivity Commission regarding the principles for a best practice price monitoring regime.

#### 3.4.1 There must be transparency

This is a key element but robustness of the information and timeliness in the publication of the data must be ensured. The information on key data, e.g. prices and key terms and conditions, must be available on a quarterly basis and provision made for data corrections to be speedily made.

#### 3.4.2 There must be flexibility

Flexibility in reporting and to be able to report on new areas of concern is essential.

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### 3.4.3 Timeliness is critical

Whilst the PC and NERA recommend that price monitoring should be for a three year period or less, or five years in exceptional cases, the NTMEU expects that the regime should be on-going in the absence of retail competition developing in the Territory.

### 3.4.4 Monitoring should be non-intrusive

Whilst the NTMEU agrees in principle that monitoring should be as non-intrusive as is practicable, it is expected that PWC will seek to minimise the effectiveness of a price monitoring regime by arguing against transparency on grounds of intrusiveness, costliness, and commercial confidentiality.

It is imperative that the regime must be effective, and that the UC should err on the side of transparency (at the expense of non-intrusion) at least in the early years of the regime.

### 3.4.5 Compliance Costs should be minimised

The NTMEU agrees that compliance costs must be reasonable. However, the NTMEU points out that the costs of a price monitoring regime are much lower than the costs of economic regulation or

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direct price controls, and so to be prevented from obtaining sufficient information to carry out its role properly on the grounds of cost, must be rejected.

#### 3.4.6 Consistency

This is a most critical principle. As the regime will include key performance indicators and a time series developed, comparisons over time will require consistency in information. In addition, to enable benchmarking with other energy suppliers, consistency in data collection and presentation will be essential.

#### 3.4.7 Relevance

The NTMEU absolutely agrees that only relevant information be collected and published.

#### 3.4.8 Trigger Mechanisms

Any price monitoring regime will only affect behaviour if there is a threat to substitute price regulation for price monitoring, in the event the latter is ineffective or if the monitored entity is intransigent. In this regard, there is a need to:

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- Outline the alternative course or courses of action, e.g. price regulation.
- The trigger mechanisms that stakeholders could access in the event that price monitoring is ineffective in changing monopolistic behaviour (eg a dispute resolution mechanism).

## **4. Development of Contestability and Competition in the Territory**

The NTMEU strongly supports the following UC's comments<sup>1</sup>:

“Considering the necessary conditions for the development of competition, there are a number of actions that Territory Government might consider to encourage the development of competition. Broadly these are:

- while PWC remains the sole source of wholesale electricity supply, requiring its generation business to determine and publish ‘standing offer’ wholesale contract prices subject to Commission oversight;
- retail tariff reform – approving a regulated retail price path that will result in tariffs that are reflective of wholesale electricity costs, network costs, Territory Government approved subsidies (irrespective of supplier) and commercial retail margin;
- strengthening the ring-fencing of PWC's component businesses; and
- reform of wholesale market arrangements which may include, for example, adopting or reflecting the NEM wholesale market

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<sup>1</sup> UC Review of Options For the Development Of A Retail Price Monitoring Regime For Contestable Electricity Customers, February 2010, page 35.

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arrangements. This would also contribute to a common national approach to energy markets.”

The NTMEU considers that without the first three dot points above, NT companies and consumers will continue to receive inefficient pricing and indifferent and biased terms and conditions for electricity services. This will mean continuation of a situation in which NT companies will remain less competitive with imports from overseas and other states. The Territory’s tourist industry will also be less competitive.

The retention of PWC as a vertically integrated entity has, as the UC points out, been justified previously based on arguments of economies of scale and scope. These arguments need reassessment in view of PWC’s prices and service performance, relative to those provided from interstate. NTMEU contends that the inefficiencies that consumers have experienced and will continue to experience may well outweigh the costs of structural separation and corporatisation. It is incumbent on the NT Government to re-examine this issue.

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#### **4.1 Price Monitoring and Information Disclosure Regime in Other Jurisdictions**

The NTMEU notes with interest the information outlined by the UC of price monitoring and information disclosure regimes in other jurisdictions, including in New Zealand. The key element to note is that all of these jurisdictions have competing retail and wholesale markets, with independent economic regulation of networks based on rather robust Rules and Regulations.

In the case of the NT, there is no competition to provide any leavening of the PWC monopolistic approach to its customers and much more remains to be done, as detailed earlier. Monitoring as used in these other jurisdictions is only effective where there is competition

## **5. Implementation Options for the Northern Territory**

### **5.1 Options**

The NTMEU agrees that, as the barest minimum, a retail price monitoring regime in the NT should be implemented. This monitoring regime should be implemented in parallel with a wider set of reforms and reviews of PWC's activities. At the very least, in view of the expected lack of alternative supply, price monitoring should cover all customers.

The UC proposes four options for price monitoring, with the implication that only one would be taken forward as its recommendation to government. As the NTMEU perused the options, it has become apparent that perhaps combinations of options or elements from one interpolated into another, might deliver the most effective outcome.

However what is not clearly stated, is what the UC will do if it identifies that PWC is exercising its monopoly status. The UC should include a proposal as to what it will do with the information it has garnered.

At the minimum, the NTMEU considers that the UC must report to the government about its concerns, as soon as it is aware of them. The UC should

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make such a report public so that consumers can take the issue up directly with government.

#### 5.2.1 Option A – disclosure of Profitability of PWC Business Activities

This is not a meaningful option. Leaving “*the market to assess the reasonableness of PWC retail prices*” is of little utility if the UC is not to provide information or comment on efficient costs and fair prices. For example, without information on gas prices paid by PWC, it would be difficult to assess with any level of confidence the costs of wholesale generation and the margins earned.

Assessing the costs that PWC states that it has does not provide any driver for PWC to be more efficient in the supply and the delivery of its services. A monopoly does not have to be efficient yet the whole concept of the NT market structure is to encourage efficient delivery of services.

Just seeing the retail profitability of PWC for each tranche of customer does little to engender a view that PWC retail pricing is efficient or even the result of efficient practices. To get any value from such information would require each customer to have access to power pricing of equivalent users in other regions.. Even if

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customers did access comparable prices in other regions, there is little they can do with the information to get any redress, as to argue a case for redress requires much more information than would be provided.

The only benefit this option provides is the provision of some additional information about each sector of the PWC activities. The drawback of such an approach is that more data is needed than just sector costs for each retail tranche. The cost of power is dependent on many other aspects such as how much power is generated for each sector, when that power is generated<sup>2</sup>. So having just costs would be insufficient for a customer to assess whether the pricing it has received is reasonable or not.

However it must be noted that electricity supply is only half of the PWC business and costs need to be segregated between power and water elements. There needs to be confidence that there has been no cross subsidization between power and water sectors as well.

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<sup>2</sup> For example the price of power in the NEM changes every 5 minutes and the costs assessed each half hour. Costs vary with the demand as well as volume.

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In the event that a customer does identify that PWC pricing is not cost reflective of the service sought, this option does little more than just report the fact. To gain any benefit, the customer has to go through the Complaint Mechanism which the UC has already identified as being effectively unworkable.

This option does not provide UC with sufficient data to enable it to assess whether PWC has been reasonable or not, and the UC is not able to advise government of the need for its intervention.

This option is little better than the status quo.

#### 5.1.2 Option B – Reporting of the estimated Benchmark Costs and Prices of an Efficient Service Provider

This is the NTMEU's preferred option, provided it is combined with Option A. It provides maximum levels of transparency and information disclosures. In this regard, subsidies provided by the government and the expected rate of return and dividends should also be disclosed.

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What the information provides is accurate data specific to the NT and its unique features. It provides an incentive to PWC to match benchmark performance rather than continue to operate on the cost plus attitude it currently does.

One of the largest costs PWC incurs is for the supply of gas for generation. Benchmarking the price of gas it uses provides an indication as to how well PWC has negotiated with gas suppliers, and how these gas prices compare to gas in other jurisdictions and against the benchmark price for LNG on the world market.

However as noted above, the costing and pricing data needs to be accompanied by production data (demand movements, volumes generated, times of generation) so that there is the ability to assess the reasonableness of the pricing offers made.

For example, as a minimum, sufficient output data is required in order to assess whether the pricing offered for peak and off peak times is cost reflective.

This approach provides customers with sufficient information so that they can carry out a detailed assessment of the efficient costs PWC

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should incur for their load profile. If there is significant differential, it is much easier for the customer to demonstrate that it is being disadvantaged by PWC practices and so be able to use the complaint mechanism more effectively. As the UC would know, the information asymmetry provides PWC with a massive advantage in terms as assessing reasonableness.

#### 5.1.3 Option C – Reporting of Price Indices and Benchmarks of Costs with other Jurisdictions

This is not a useful option as it only provides information (not price control) which, in normal circumstances, can be contested by the incumbent with arguments based on the following usual suspects:

- Invalid comparisons (e.g. comparing oranges with apples, weather and season differences, customer densities, etc)
- Need a long term data series for meaningful comparisons.
- Data used is dated, without taking into account improvements that have been made since.

Such information is usually already available to those seeking the information. As the UC is aware, customers have already provided

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the UC with such comparisons as the basis for demonstrating the PWC is not efficient in its operations.

Even when this information has been provided, the UC has not been able to assist the dis-satisfied customer in getting an improved offer from PWC.

#### 5.1.4 Option D: Status Quo

The NT economy will remain constrained if this option is adopted. This is the least responsible option. It is impossible under current arrangements to conduct reasonable and fair negotiations with PWC. The UC's paper illustrates the numerous problems, and the "do nothing" option merely perpetuates the dissatisfaction the UC is aware of.

## **5.2 Implementation Issues**

### 5.2.1 Target of a price Monitoring Regime

The NTMEU agrees with the setting out of a flexible retail price monitoring regime capable of meeting the requirements of a range of

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interested groups. However, it should also have in place an approach as to how it will address complaints that will come from consumers.

### 5.2.2 Treatment of Confidential Information

The NTMEU strongly supports maximum disclosure of information. It is common for monopolists to argue that information is commercially sensitive to avoid disclosure. In PWC's case, there is no competitor now or in the foreseeable future. Disclosure should be authorised by regulation.

### 5.2.3. Disclosure of Information

The NTMEU considers that the UC should seek a public interest provision in the Utilities Commission Act in the context of the UC's consideration of public disclosure of information issues which may be regarded by PWC as "confidential" or "commercially sensitive". There should be a public consultation process if PWC makes a claim on confidentiality or commercially sensitivity grounds.

Disclosure of "confidential" information must be sufficient to ensure potential competitors of PWC are aware of the hurdle rates they will need to match if they are to be viable. If this information is not available, then new entrants will not seek to enter the NT market.

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#### 5.2.4 Disclosure of Wholesale Generation Prices

In its submission to the NT government in response to its draft policy paper on the new legislative framework for the NT power supply industry, the NTMEU saw that release of this information is the only way the NT will eventually get competition to PWC as power retailer and PWC as power wholesaler. The NTMEU has provided the UC with a copy of this submission and in it the NTMEU more fully develops its arguments as to why this is necessary.

The NTMEU is surprised by the statement

“...the Commission notes that, due to the unique characteristics of the energy market in the Territory, there might be a number of inherent issues with releasing wholesale generation prices and, in particular, the underlying gas costs”. (UC, p.54).

In a system such as PWC uses to generate its power, gas prices comprise between 50-70% of the costs of the power, dependent on the type of generation plant used (eg OCGT and CCGT) and the way they are operated. Thus the cost of gas to PWC is a major element of the cost of wholesale generated power.

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#### 5.2.5 Information on PWC Retail Prices

The current arrangements for providing information on the makeup of the final retail price is that the amounts are very bundled, comprising peak and off-peak offers and identifying the associated network costs. They provide very little information as to how the offers are developed, and if they are equitable.

The NTMEU agrees with the UC that PWC needs to breakdown its pricing into the constituent elements. Also needed is a clear explanation as to how costs are to be shared between contestable and non-contestable customers, both in relation to network cost allocation between the customer classes, and the “so called” competitive elements such as generation and retail costs.

As a minimum, the cost elements and methodology for allocating network, generation and retail costs between customer classes and between peak and off peak need to be fully explained by PWC to all customers, and a formal pricing methodology must be developed and approved by the UC

### 5.2.6 Disclosure of Gas Prices

In a gas fired power generation system, the largest source of cost for the power generated is the cost of gas supply. Whilst NTMEU can see that divulging the details of the gas contract with ENI might create some concerns within ENI, as PWC is a monopoly, it does not suffer from the divulging of the gas price as there is no competitor to take advantage of the information.

Unless the price for the gas is provided, consumers cannot assess the reasonableness of the power pricing offered by PWC.

It is therefore incumbent on PWC to find a way around this impasse – confidentiality of the ENI gas price and the need to prove that its power price is reasonable.

The NTMEU sees that there has to be developed a mechanism whereby any consumer has access to sufficient information on the cost build up for power generated by PWC, to be confident that its offer from PWC is reasonable. Divulging the cost of gas is the most transparent method.

Already some NT customers also use gas for their own needs, and have an understanding of the cost of gas delivered to PWC. These

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customers have some difficulty is rationalising the prices they pay for gas and what the price for power PWC charges. Despite this disparity, the PWC insists that its power price reflects the cost of gas, but declines to provide evidence to support their contention. This is typical of the approach PWC takes to information disclosure.

Because of PWC declining to explain differentials between comparable gas prices and its power prices, the NTMEU sees that having estimates of gas prices (such as the UC approach used earlier for generation price monitoring) or providing benchmark prices for national and international gas prices, will still not be sufficient to drive PWC to demonstrate why its power prices are reasonable – PWC will still continue to refuse to explain any cause of disparity between the power price they offer, and a benchmark power price.

If the UC is only prepared to provide its estimate of gas price as might apply to PWC and/or national and international benchmarks, then the UC would also have to provide a view as to whether the gas price PWC pays is in the same range of these benchmarks. With this information PWC would not be able to hide behind the confidentiality clause in its contract, and consumers would be able to develop a reasonable estimate of what a fair power price might be.

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If PWC persists in maintaining that its power prices need to be higher than the customer estimate, then the customer has sufficient information to lay before the UC in support of its arguments.

#### 5.2.7 Data Quality Provided to the Commission

To ensure the effectiveness of the price monitoring regime, data quality must be robust e.g. accuracy, timeliness, consistency, comparability and meaningfulness. The information disclosed should be prescribed and be subject to audit. There should be provision to discourage inaccurate and delays in information disclosure.

#### 5.2.8 Longevity of the Regime

The NTMEU agrees that the retail price monitoring regime for contestable customers is necessary until competition for power supplies in the NT has become effective.

#### 5.2.9 Responsibility for Price Oversight

The NTMEU agrees that the UC should carry out the function of over-sighting the regime.

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## 6. Conclusions

In the above sections, the NTMEU has provided its views on many aspects that are the focus of the Issue Paper. Below the NTMEU provides brief responses to the specific question, as the detail behind the responses has already been addressed.

	UC Question	NTMEU response
1	Under the current regulations, do you consider that there is sufficient information publicly disclosed? If not, which other information would need to be published and why?	No  Customers have tried to replicate PWC costings but due to a lack of information have not been able to. As a result PWC has been able to refute customer calculations. The information needed is that sufficient to be able to replicate the costs of generation on at least a peak and off peak time basis.
2	Do you agree with the objectives defined by the Commission and why?	Yes, to the extent that they go.  The NTMEU considers that an additional objective must be that should the UC consider PWC is not complying with the requirements of the regime and the expectations of the outcomes, then the UC will take

		<p>immediate action to remedy the situation.</p> <p>The NTMEU does not want to see the UC just monitoring PWC activities while customers become more and more disadvantaged.</p>
3	<p>Do you consider the above principles relevant for the assessment of options for the development of a price monitoring regime in the Territory and why? Do you agree with these principles? Does the Commission need to consider any other principles?</p>	<p>Yes, as far as they go.</p> <p>As with the response to the earlier question, a principle must be that immediate action will be taken as soon as the UC is aware of a problem.</p> <p>Monitoring, without having the ability to take action, is useless.</p>
4	<p>The Commission seeks the views of interested parties as to which type of information PWC should disclose as part of Option A and why.</p>	<p>See comments under 5.1.1</p>
5	<p>The Commission seeks the views of interested parties as to the advantages and disadvantages associated with</p> <ul style="list-style-type: none"> <li>• price indices</li> <li>• benchmarking prices and costs with other jurisdictions</li> </ul>	<p>See comments under 5.1.3</p>

6	<p>The Commission seeks the views of interested parties about the adequacy of current arrangements to conduct reasonable and fair negotiations with PWC.</p>	<p>It is impossible to conduct fair and equitable negotiations with a monopoly<sup>3</sup>, and negotiating with the PWC is no different.</p> <p>Those customers that have attempted to obtain changes to PWC T&amp;Cs or change a price offer, have had little success.</p> <p>This clearly demonstrates that the current arrangements are inadequate and are not reflective of a competitive market.</p>
7	<p>The Commission is considering the merits of setting out a flexible retail price monitoring capable of meeting the requirements of a range of interested groups. The Commission is seeking the views of interested parties on this issue.</p>	<p>The UC is quite correct that “one size does not fit all” and therefore the UC will have to implement a regime where it provides data appropriate to a range of customer uses.</p> <p>In practice the UC will see that those customers, who consider themselves significantly disadvantaged and have the ability to assess the degree of unreasonableness of PWC offers, will be those who contact the UC.</p> <p>The UC must therefore ensure those less well equipped also receive protection of the monitoring regime.</p>

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<sup>3</sup> The term “negotiating” with a “monopoly” is an oxymoron

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8	Do you consider that PWC generation prices are commercially sensitive and do you consider their disclosure would unfairly undermine PWC's competitive position?	<p>This raises the concern that as PWC has no competition, how can divulging "confidential information" cause harm, other than to show that PWC is not operating efficiently.</p> <p>In its response to the NT government regarding its draft policy paper on the new legislative framework for the NT power supply industry, the NTMEU proposed that until there is competition in generation, PWC should publish its prices for generation so that new entrant retailers could operate in the NT market. Such publishing of generation costs would provide the basis for new entrant generators to be able to assess the viability of entering the market.</p>
9	Do you consider the approach used by the Commission for the Generation Price Monitoring regime appropriate? What are the advantages and disadvantages of such an approach?	<p>The NTMEU agrees that wholesale generation prices must be published. This is the only way new entrant retailers will be encouraged, and provides a hurdle price for new entrant generators. The disadvantage is that PWC will have to ensure that its practices are most efficient otherwise it will lose market share to competitor generators.</p> <p>See the response to question 8</p>
10	Do you consider the current reporting for PWC provides sufficient information for	No

	<p>contestable customers in negotiating with PWC? If not, what additional information should be disclosed?</p>	<p>See NTMEU comments throughout this submission</p>
11	<p>With regards to disclosure of generation costs, the Commission seeks the views of interested parties on the advantages/disadvantages of providing estimates of :</p> <ul style="list-style-type: none"> <li>• underlying gas costs similar to the approach used by the Commission’s previous generation price monitoring approach</li> <li>• the advantages/disadvantages of providing national/international benchmarks for the generation costs</li> </ul>	<p>Unless there can be some certainty that the UC estimate for gas price and/or the national and international benchmarks approximate the actual gas price, then as the actual gas price is such a large element of the final power price, the gas price needs to be provided.</p> <p>See clause 5.2.6 above</p>
12	<p>The Commission seeks your views on how prescriptive information disclosure should be and whether the information should be audited.</p>	<p>Data which cannot be substantiated or which cannot be demonstrated to be accurate, is less than useful. Proving data is accurate is an essential element of any regulatory regime.</p>
13	<p>In your views, which agency would be best suited to carry out the implementation of a retail price monitoring regime in the Territory?</p>	<p>The NTMEU considers the UC is the best placed entity to undertake this role</p>