

NORTHERN TERRITORY ELECTRICITY RING-FENCING CODE

Fourth Version
26 August 2020

Foreword

This Fourth Version of the Northern Territory Electricity Ring-fencing Code (“**Code**”):

- is made by the Utilities Commission of the Northern Territory pursuant to section 24 of the *Utilities Commission Act 2000* (NT);
- commences operation on 26 August 2020; and
- replaces the previous versions of the Code.

Notice of the making of the Code was published in the Gazette on 26 August 2020.

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Amendment History

Version	Date made	Date of commencement
1	27 June 2001	1 July 2001
2	29 April 2002	29 April 2002
3	1 December 2008	1 January 2009
4	26 August 2020	26 August 2020

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Northern Territory Electricity Ring-Fencing Code

1. Introduction

1.1 Authority

- (a) This **Code** is made by the **Commission** under section 24 of the **Act** and in accordance with the authority granted to the **Commission** by Regulation 2 of the *Utilities Commission Regulations*.
- (b) In making this **Code**, the **Commission** has:
 - (i) sought to promote and achieve the object of the **Act**;
 - (ii) sought to promote and achieve the objects of the **ERA**; and
 - (iii) had regard to the matters listed in section 6(2) of the **Act**.

1.2 Date of Commencement

- (a) This **Code** takes effect on and from the **Commencement Date**.

1.3 Previous versions of the Code

- (a) This **Code** is the fourth version of the Northern Territory Electricity Ring-fencing Code made by the **Commission**.
- (b) This **Code** replaces the previous versions of the Northern Territory Electricity Ring-fencing Code made by the **Commission** on and from the **Commencement Date**.
- (c) On and from the **Commencement Date** the previous versions of the Northern Territory Electricity Ring-fencing Code have continued application only in respect of matters and things occurring before the **Commencement Date**.
- (d) The transitional provisions in Schedule 2 have effect.

1.4 Application

- (a) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must comply with this **Code**.
- (b) An **Electricity Entity** that is required to comply with this **Code** must also ensure that its **Employees** comply with applicable provisions of this **Code**.

1.5 Obligation to remedy

- (a) If an **Electricity Entity** breaches this **Code** it must remedy that breach as soon as practicable.

1.6 Guidelines

- (a) The **Commission** may make **guidelines** relating to this **Code**, including:
 - (i) the administrative procedures and arrangements that the **Commission** intends to adopt when administering this **Code**; or
 - (ii) the application or interpretation of, or matters arising under, this **Code**.
- (b) The **Commission** must publish a guideline made under clause 1.6(a) on the **Commission's** website.
- (c) A **guideline** takes effect from the date of publication of the **guideline** by the **Commission** or from a later date specified in the **guideline**.

2. Objectives

The objectives of this Code are:

- (a) to promote efficiency and competition in the **Electricity Supply Industry** and protect the interests of consumers of electricity by providing for:
 - (i) separate accounts for the activities of a **Prescribed Business**;
 - (ii) non-discriminatory conduct by a **Prescribed Business**;
 - (iii) the protection of confidential information provided to a **Prescribed Business**;
and
 - (iv) non-discriminatory disclosure of confidential or commercially valuable information by a **Prescribed Business**; and
- (b) to achieve an appropriate balance between the public benefits of requiring an **Electricity Entity** to comply with this **Code** and the administrative costs to the **Electricity Entity** of complying with this **Code**.

3. Minimum Ring-fencing Requirements

3.1 Financial accounts

- (a) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must:
 - (i) establish and maintain a separate set of financial accounts and reports in respect of each **Prescribed Business**; and

- (ii) prepare the financial accounts and reports in accordance with the *Accounting Procedures* applying to that *Electricity Entity* from time to time under clause 4.

3.2 Cost allocation

- (a) An ***Electricity Entity*** that carries on a ***Prescribed Business*** in the Northern Territory must allocate any costs that are shared between a ***Prescribed Business*** and a ***Related Contestable Business*** in a manner that:
 - (i) complies with the ***Cost Allocation Procedures*** applying to that ***Electricity Entity*** from time to time under clause 4; and
 - (ii) is otherwise fair and reasonable.

3.3 Non-discrimination

- (a) An ***Electricity Entity*** that carries on a ***Prescribed Business*** in the Northern Territory must ensure that in the conduct of the ***Prescribed Business***, it does not discriminate (directly or indirectly) as between ***Customers*** or classes of ***Customer***.
- (b) An ***Electricity Entity*** that carries on a ***System Controller Business*** in the Northern Territory must ensure that in the conduct of the ***System Controller Business***, it does not discriminate (directly or indirectly) against another ***Electricity Entity*** in a way that favours:
 - (i) a ***Power Networks Business*** or ***Gas Supplier Business*** of that ***Electricity Entity***; or
 - (ii) any other business (or component of a business) carried on by that ***Electricity Entity***.
- (c) Clause 3.3(b) does not prevent the proper performance of ***System Control Functions*** by a ***System Controller Business***.

3.4 System Controller's offices

- (a) Within 6 months of the ***Commencement Date***, an ***Electricity Entity*** that carries on a ***System Controller Business*** in the ***Northern Territory*** must ensure ***offices*** used for the ***System Controller Business*** are separate from ***offices*** used for a ***Gas Supplier Business***.

3.5 Confidential Information

- (a) An ***Electricity Entity*** that carries on a ***Prescribed Business*** in the Northern Territory must ensure that ***Confidential Information*** provided to a ***Prescribed Business*** by or in respect of a ***Customer*** is:

- (i) used only for the purpose for which that **Confidential Information** was provided by or in respect of that **Customer**;
- (ii) only disclosed if the disclosure of that **Confidential Information** is permitted under the **Information Procedures** applying to that **Electricity Entity** under clause 4 from time to time and disclosure is otherwise permitted by law; and
- (iii) otherwise dealt with in accordance with the **Information Procedures** applying to that **Electricity Entity** under clause 4 from time to time.

3.6 Designated Information

- (a) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must ensure that it does not discriminate (directly or indirectly) as between a **Related Contestable Business** and a **Competitor** of a **Related Contestable Business** in relation to the disclosure of **Designated Information**.
- (b) Without limiting clause 3.5, an **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must make **Designated Information** available to a **Related Contestable Business** and a **Competitor** of a **Related Contestable Business** in accordance with the **Information Procedures** applying to that **Electricity Entity** under clause 4 from time to time.

4. Approval of Procedures

4.1 Introduction

- (a) In this clause 4 unless the context otherwise requires, a reference to “**Procedures**” includes in each case the **Accounting Procedures**, **Cost Allocation Procedures** and **Information Procedures**.

4.2 Submission of draft Procedures for approval by the Commission

- (a) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must within 6 months of the **Commencement Date** submit to the **Commission** for approval draft **Procedures** of the **Electricity Entity** developed in accordance with clause 4.3.
- (b) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must within 30 days of the **AER** approving any change to the **AER-Approved Cost Allocation Method** submit to the **Commission** for approval draft amended **Cost Allocation Procedures** of the **Electricity Entity** developed in accordance with clause 4.3.

4.3 Requirements for draft *Procedures*

- (a) Subject to clause 4.3(b), the draft ***Procedures*** submitted by an ***Electricity Entity*** under clause 4.2 must be:
 - (i) designed to ensure compliance with the ***Electricity Entity***'s obligations under clause 3; and
 - (ii) otherwise consistent with the principles set out in Schedule 1 to this ***Code*** applicable to the type of ***Procedure***.
- (b) Draft ***Cost Allocation Procedures*** submitted under clause 4.2 must be the same as the ***AER-Approved Cost Allocation Method*** except to the extent otherwise approved by the ***Commission***.

4.4 Matters to which the *Commission* will have regard when considering draft *Procedures*

- (a) In considering whether to approve any draft ***Procedures*** submitted by an ***Electricity Entity*** under clause 4.2, the ***Commission*** will have regard to:
 - (i) the objectives of this ***Code*** set out in clause 2;
 - (ii) the matters set out in section 6(2) of the ***Act***; and
 - (iii) whether the draft ***Procedures*** give effect to the principles set out in Schedule 1 to this ***Code*** for that type of ***Procedure***,and may have regard to any other matters the ***Commission*** considers relevant.

4.5 Approval by the *Commission* may be subject to conditions

- (a) The ***Commission*** may grant its approval of the draft ***Procedures*** submitted by an ***Electricity Entity*** under clause 4.2 subject to such conditions as the ***Commission*** considers are appropriate in the circumstances.

4.6 Compliance by an *Electricity Entity* with *Procedures* and conditions of approval

- (a) An ***Electricity Entity*** must comply with any ***Procedures*** approved by the ***Commission*** from time to time under clause 4.2 and any conditions attaching to the ***Commission's*** approval of those ***Procedures***.

4.7 Variations to existing *Procedures*

- (a) An ***Electricity Entity*** may at any time apply to the ***Commission*** to approve a proposed variation to any existing ***Procedures***.
- (b) Unless the ***Commission*** considers that the application has been made on trivial or vexatious grounds (in which case the ***Commission*** may reject the application) an application to vary existing ***Procedures*** will be dealt with by the ***Commission*** in

accordance with the procedure set out in this clause 4 applying to an application to approve the initial **Procedures**.

4.8 Timing

- (a) After receiving an application from the **Electricity Entity** to approve any **Procedures** (or any variation to the existing **Procedures**), the **Commission** must notify the **Electricity Entity**:
 - (i) whether the **Commission** approves those **Procedures** (or the proposed variation to the existing **Procedures**); and
 - (ii) any conditions attaching to the **Commission's** approval of those **Procedures** (or the proposed variation to the existing **Procedures**).
- (b) The **Commission** must use reasonable endeavours to notify the relevant **Electricity Entity** under clause 4.8(a) within 30 days of the application or if a longer period is notified by the **Commission** to the **Electricity Entity**, that longer period.
- (c) The **Electricity Entity** must implement any **Procedures** within 30 days after the date upon which they are approved by the **Commission**.

5. Adding to or Amending this Code

5.1 Variation or revocation by the Commission under the Act

- (a) The **Commission** may at any time vary or revoke this **Code** (or any part of this **Code**) in accordance with section 24 of the **Act**.

5.2 Application by an Electricity Entity for variation or revocation

- (a) An **Electricity Entity** or other person may request the **Commission** to vary or revoke any part of this **Code**.
- (b) Unless the **Commission** considers that the application has been made on trivial or vexatious grounds (in which case the **Commission** may reject the request) a request to vary or revoke any part of this **Code** will be dealt with by the **Commission** in accordance with the procedure set out in this clause 5 and the **Act**.

5.3 Matters to which the Commission will have regard in making a decision

- (a) In deciding whether to vary or revoke this **Code** (or any part of this **Code**) under clauses 5.1 or 5.2, the **Commission** will have regard to:
 - (i) the objectives of this **Code** set out in clause 2; and
 - (ii) the matters listed in section 6(2) of the **Act**.

6. Not used.

7. Compliance Procedures and Compliance Reporting

7.1 Electricity Entity to establish and maintain compliance procedures

- (a) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must within 6 months of the **Commencement Date** establish, document, maintain and comply with appropriate auditable internal policies, procedures and systems (“**compliance procedures**”) for ensuring that it complies with its obligations under this **Code**.
- (b) The **compliance procedures** must include policies, procedures and systems for:
- (i) training of **Employees** about the obligations of the **Electricity Entity** under this **Code**;
 - (ii) regular internal audit by the **Electricity Entity** of its compliance with its obligations under this **Code**;
 - (iii) regular reporting to, and consideration by, the **Directors** of the **Electricity Entity** concerning compliance with the obligations of the **Electricity Entity** under this **Code**;
 - (iv) dealing with any complaints made by a **Customer** or other third party to the **Electricity Entity** in connection with non-compliance by the **Electricity Entity** with its obligations under this **Code**; and
 - (v) detecting and reporting to the **Commission** any breach of the **compliance procedures**.
- (c) The **Commission** may (after giving reasonable notice to the **Electricity Entity**) require the **Electricity Entity** to demonstrate to the **Commission’s** satisfaction that:
- (i) the **Electricity Entity’s** compliance procedures are adequate; and/or
 - (ii) the **Electricity Entity** is complying with its compliance procedures.
- (d) Any notification made by the **Commission** to the **Electricity Entity** concerning the **Commission’s** opinion of the adequacy of the **compliance procedures** of that **Electricity Entity** will not affect the **Electricity Entity’s** obligations under this **Code**.

7.2 Compliance reports

- (a) An **Electricity Entity** must provide a report to the **Commission**, at reasonable intervals determined by the **Commission**, describing the measures taken by the **Electricity Entity** to ensure compliance with its obligations under this **Code** (a **compliance report**).

- (b) The **compliance report**, and the **Commission's** assessment of compliance, may be made publicly available by the **Commission** subject to the **Commission** first complying with its obligations under section 26 of the **Act**.

7.3 Audit

- (a) The **Commission** may, upon reasonable notice to an **Electricity Entity**, appoint an independent auditor to undertake an audit of the **Electricity Entity's** compliance with any of its obligations under this **Code**.
- (b) If the **Commission** nominates standards or requirements to apply to an audit under clause 7.3, the auditor will report in accordance with those standards or requirements.
- (c) The **Commission** will provide a copy of the auditor's report to the **Electricity Entity** as soon as reasonably possible after it has been received from the auditor.
- (d) The **Electricity Entity** will be responsible to pay the costs of undertaking that audit if, in the opinion of the **Commission**, the auditor discovers any failure by the **Electricity Entity** to comply with a material obligation under this Code.
- (e) Upon notification to the **Electricity Entity** by the **Commission**, the **Electricity Entity** must pay the amount of the audit costs to the **Commission** in the amount notified by the **Commission**.

7.4 Notification of breaches to the Commission

- (a) An **Electricity Entity** must report any breach of its obligations under this **Code** to the **Commission** as soon as reasonably possible after becoming aware that the breach has occurred and must advise of the remedial action that is being undertaken to rectify the breach.

8. Exemption from Compliance with Specified Obligations

8.1 Application for an exemption

- (a) An **Electricity Entity** may apply to the **Commission** for an exemption from compliance with any obligation (or component of an obligation) under this **Code**.
- (b) A notice requesting an exemption must include all information and materials necessary to support the **Electricity Entity's** application for exemption.

8.2 Matters to which the Commission will have regard on the application

- (a) In determining whether to grant any exemption, the **Commission** will have regard to:
 - (i) the objectives of this **Code** set out in clause 2;
 - (ii) the matters listed in section 6(2) of the **Act**; and

- (iii) the general principle that the **Commission** will only grant an exemption if it is satisfied that the benefit, or likely benefit, to the public of compliance with the relevant obligation will be outweighed by the administrative cost to that **Electricity Entity** of complying with that obligation.

8.3 Terms or conditions of exemption

- (a) The **Commission** may grant an exemption:
 - (i) on different terms to those sought by the **Electricity Entity**; or
 - (ii) subject to such conditions as the **Commission** considers are appropriate in the circumstances.

8.4 Procedure for consideration of application

- (a) When the **Commission** receives an application under clause 8.1 the **Commission** must:
 - (i) if it considers that the application has been made on trivial or vexatious grounds, reject the application without further consideration; or
 - (ii) in all other cases within 30 days after receipt of the application, publish a notice on its website which at least identifies the **Electricity Entity** that has applied for the exemption and the nature of the requested exemption.

8.5 Draft decision

- (a) Before making a decision on an application under clause 8.1, the **Commission** must first publish a draft decision and invite comments by a date specified in the draft decision which must be at least 30 days.
- (b) The **Commission** must consider any submissions it receives by the date specified by the **Commission** under clause 8.5(a) and it may (but is not obliged to) consider any submissions received after that date.

8.6 Final decision

- (a) Within 30 days (or such longer period as the **Commission** notifies) after the last day for submissions on the draft decision specified by the **Commission**, the **Commission** must publish on its website a notice of its final decision stating whether or not it will grant the exemption sought in that application.
- (b) A final decision under clause 8.6(a) has effect when the notice under clause 8.6(a) is published or such later date as the **Commission** specifies in the notice.

9. Outsourcing

9.1 Outsourced Service Provider

- (a) If an **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory arranges for or uses another entity to perform any of its business functions in relation to a **Prescribed Business** of that **Electricity Entity**, that other entity will be an **Outsourced Service Provider** in relation to that **Electricity Entity** and business function for the purposes of this **Code**.

9.2 Use reasonable endeavours to ensure compliance

- (a) If an **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory uses an **Outsourced Service Provider** to perform any of its business functions in relation to a **Prescribed Business** of that **Electricity Entity**, that **Electricity Entity** must use its reasonable endeavours to ensure that the **Outsourced Service Provider** performs that business function in a manner which complies with that **Electricity Entity's** obligations under this **Code**.

9.3 Outsourcing agreements

- (a) Without limiting clause 9.2, if an **Electricity Entity** enters into an agreement with an **Outsourced Service Provider** in relation to the performance of any of the business functions of the **Prescribed Business** of that **Electricity Entity**, the **Electricity Entity** must ensure that the terms of the agreement are consistent with and facilitate the implementation of this **Code**.

10. Not used

11. Preservation of Other Obligations and Compliance with Applicable Laws

11.1 No derogation from other obligations

- (a) Nothing in this **Code** or any **Procedures** or the conditions of approval under clause 4.5 or the conditions of an exemption under clause 8.3 will derogate from any obligation imposed upon an **Electricity Entity** under the **Act**, the **ERA**, any regulation made under those Acts, any condition of a **licence** issued to the **Electricity Entity** or any other code made by the **Commission** under the **Act**.

12. Not used

13. Definitions and interpretation

13.1 Italicised terms

- (a) In this **Code**, words appearing like **this** will have the meaning set out in clause 13.2.

13.2 Defined terms

- (a) In this **Code**, unless the contrary intention appears:

“**Accounting Procedures**” means procedures of that name approved by the **Commission** under clause 4 of this **Code**;

“**Act**” means the *Utilities Commission Act 2000* (NT);

“**AER**” means the Australian Energy Regulator established by section 44AE of the *Competition and Consumer Act 2010* (Cth);

“**AER-Approved Cost Allocation Method**” means the cost allocation method of a **Power Networks Business** approved by the **AER** under clause 6.15.4 of the **NER (NT)** and clause 3.1 of the AER’s Cost Allocation Guidelines made under the **NER (NT)**.

“**applicable laws**” means:

- (a) legislation and regulations; and
- (b) codes or other instruments with which an **Electricity Entity** must comply under the terms of a **licence** issued to the **Electricity Entity**;

“**Associate**” means in relation to:

- (a) an **Electricity Entity** that is a legal entity incorporated pursuant to the **Corporations Act**, a person that would be an associate of that **Electricity Entity** under Division 2 of Part 1.2 of the **Corporations Act** if sections 13, 16(2) and 17 did not form part of the **Corporations Act**;
- (b) an **Electricity Entity** that is incorporated pursuant to the **GOC Act**:
 - (i) any other **Electricity Entity** that is also incorporated pursuant to the **GOC Act**; and
 - (ii) a person that would be an associate of that **Electricity Entity** under Division 2 of Part 1.2 of the **Corporations Act** if:
 - (A) sections 13, 16(2) and 17 did not form part of the **Corporations Act**; and
 - (B) that **Electricity Entity** were a legal entity incorporated pursuant to the **Corporations Act**

- (c) an **Electricity Entity** that is not a legal entity incorporated pursuant to the **Corporations Act** or the **GOC Act**, a person that would be an associate of that **Electricity Entity** under Division 2 of Part 1.2 of the **Corporations Act** if:
- (i) sections 13, 16(2) and 17 did not form part of the **Corporations Act**; and
 - (ii) that **Electricity Entity** were a legal entity incorporated pursuant to the **Corporations Act**;

“**Code**” means this “Northern Territory Electricity Ring-fencing Code”;

“**Commencement Date**” means the date of publication of the notice of variation to the **Code** in the *Gazette*;

“**Commission**” means the Utilities Commission of the Northern Territory established by the **Act**;

“**Competitor**” of a **Related Contestable Business** means an entity (whether identifiable, actual or notional) which either actually or potentially may be in competition with the **Related Contestable Business**;

“**compliance procedures**” has the meaning in clause 7.1(a) of this **Code**;

“**compliance report**” has the meaning in clause 7.2(a) of this **Code**;

“**Confidential Information**” means information which is or has been provided to, or has otherwise been obtained by, an **Electricity Entity** (or **Employee** of that **Electricity Entity**) in connection with the carrying on of a **Prescribed Business** and which is confidential or commercially sensitive and includes information which is derived from any such information;

“**contestable**” in relation to goods or services within the **Electricity Supply Industry** means goods or services in relation to which there exists or potentially exists competition in a market in relation to the supply of the relevant goods or services;

“**Corporations Act**” means the *Corporations Act 2001* (Cth);

“**Cost Allocation Procedures**” means procedures of that name approved by the **Commission** under clause 4 of this **Code**;

“**Customer**” means:

- (a) in the case of a **System Controller Business**, each **Electricity Entity** or **Exempt Electricity Entity** that directly or indirectly uses a power system in respect of which the **System Controller Business** exercises **System Control Functions**; and
- (b) in the case of an **Electricity Entity** (other than in respect of a **System Controller Business**), a person who engages (or proposes to engage) in the activity of purchasing goods or services from the **Electricity Entity**;

“**Designated Information**” means in relation to an **Electricity Entity**, information (including **Confidential Information**) obtained by or becoming known to the **Electricity Entity** (or its **Employees**) in the course of or as a result of conducting a **Prescribed Business** and which might reasonably be expected to:

- (a) materially affect the commercial interests of a **Competitor** of a **Related Contestable Business** of that **Electricity Entity** if disclosed to that **Related Contestable Business**; or
- (b) provide a competitive advantage to a **Related Contestable Business** of that **Electricity Entity** over a **Competitor** of that **Related Contestable Business** if disclosed to that **Related Contestable Business** without also being disclosed to that **Competitor**,

and includes information which is derived from any such information;

“**Director**” has the same meaning as in the **Corporations Act** and includes in the case of the **PWC** its chief executive officer from time to time and each of the persons appointed as directors of **PWC** in accordance with the **GOC Act**;

“**Electricity Entity**” has the meaning given to ‘electricity entity’ in the **ERA**;

“**Electricity Supply Industry**” has the meaning given to ‘electricity supply industry’ in the **ERA**;

“**Employee**” means a **Director** or other officer, employee, consultant, contractor, or agent of an **Electricity Entity**;

“**ERA**” means the *Electricity Reform Act 2000* (NT);

“**Exempt Electricity Entity**” means a person that has the benefit of an exemption granted by the **Commission** from Part 3 of the **ERA**, or from specified provisions of Part 3 of the **ERA**;

“**Gas Supplier Business**” means the business of supplying natural gas to an **Electricity Entity**;

“**Gazette**” has the same meaning as is given to that term in the *Interpretation Act 1978* (NT);

“**GOC Act**” means the *Government Owned Corporations Act 2001* (NT);

“**guideline**” means a guideline published by the **Commission** under section 7 of the **Act**;

“**Information Procedures**” means procedures of that name approved by the **Commission** under clause 4 of this **Code**;

“**licence**” means a licence granted under the **ERA**;

“**minimum ring-fencing requirements**” means the requirements under clause 3 of this **Code**;

“**NEL (NT)**” means the National Electricity (NT) Law as defined in the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015* (NT);

“**NER (NT)**” means the National Electricity (NT) Rules as defined in the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015* (NT);

“**office**” means

(a) a building; or

(b) an entire floor of a building, or a part of a building,

that has separate and secure access requirements so that staff from a different building or elsewhere in the building do not have unescorted access to it.

“**Outsourced Service Provider**” has the meaning in clause 9.1(a) of this **Code**;

“**Power Networks Business**” means the business of a network provider (as defined in the **ERA**) but only to the extent that:

(a) the network provider is a Distribution Network Service Provider as defined in the **NER (NT)** in respect of the business; and

(b) the network services provided by the network provider are subject to economic regulation by the **AER** under the **NER (NT)** and the **NEL (NT)**;

“**Prescribed Business**” means a **System Controller Business**;

“**Procedure**” has the meaning given to it by clause 4.1 of this **Code**;

“**PWC**” means the Power and Water Corporation established under the *Power and Water Corporation Act 1987* (NT);

“**Related Contestable Business**” means, in relation to an **Electricity Entity**, any business (or component of a business), carried on by that **Electricity Entity** or an **Associate** of that **Electricity Entity** in the **Electricity Supply Industry** other than:

(a) a **System Controller Business**; or

(b) a **Power Networks Business**;

“**System Control Functions**” means the functions and powers of a ‘system controller’ within the meaning of the **ERA** and includes the functions and responsibilities of the market operator as set out in the **System Control Technical Code**; and

“**System Controller Business**” means a business having **System Control Functions**;

“**System Control Technical Code**” means the code of that name approved by the **Commission** in accordance with the **ERA** and published by **PWC**.

(b) For the purposes of this **Code** an **Electricity Entity** is to be regarded as carrying on a **Prescribed Business** if:

(i) it is the holder of a licence authorising the activities for which a licence is required comprising all or part of the relevant **Prescribed Business**; or

- (ii) it otherwise engages in the activity of owning, controlling or operating the relevant **Prescribed Business**.

13.3 Other interpretation principles

- (a) The *Interpretation Act 1978* (NT) applies to and in respect of this **Code** as if it were a statutory instrument for the purposes of that Act.
- (b) Unless the contrary intention is apparent:
 - (i) a reference to a clause or Schedule is a reference to a clause or Schedule in this **Code**;
 - (ii) a reference in this **Code** to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, the document or provision;
 - (iii) without limiting paragraph (a):
 - (A) the word 'may' in conferring a power will be interpreted to imply that a power may be exercised or not, at discretion; and
 - (B) the word 'must' in conferring a function will be interpreted to mean that the function so conferred must be performed.
- (c) Schedules to this **Code** form part of this **Code**.
- (d) If there is any inconsistency between the substantive provisions of this **Code** and the provisions of any Schedule then the provisions of the substantive provisions will prevail to the extent of the inconsistency and the provisions of this **Code** will be construed accordingly.
- (e) A reference to an accounting term in this **Code** is to be interpreted in accordance with accounting standards under the **Corporations Act** and, if not inconsistent with those accounting terms, generally accepted principles and practices in use from time to time in Australia in the **Electricity Supply Industry**.

13.4 Making of an instrument or decision

- (a) Where this **Code** authorises the making of an instrument or decision:
 - (i) the power includes the power to amend or revoke the instrument or decision; and
 - (ii) the power to amend or revoke the decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

Schedule 1: Accounting, Cost Allocation and Information Principles

1. Accounting Principles

- 1.1 The **Accounting Procedures** will only be approved by the **Commission** if:
- (a) they ensure compliance with the relevant **minimum ring-fencing requirements**;
 - (b) they are consistent with the accounting policies and procedures for other regulatory instruments;
 - (c) their utilisation involves a recognisable and rational economic basis;
 - (d) the resultant financial information satisfies the concepts of relevance and reliability, thereby ensuring that the substance of the underlying transactions and events is reported; and
 - (e) they comply with the principles set out in this Schedule 1.
- 1.2 The **Accounting Procedures** must be presented to the **Commission** in a manner that ensures that the **Commission** may readily understand the methodologies and procedures comprising such **Accounting Procedures** and the resultant financial statements and reports of each **Prescribed Business**.
- 1.3 The **Accounting Procedures** must conform to Australian Accounting Standards wherever possible.
- 1.4 The **Accounting Procedures** must ensure the reporting of the substance of transactions by:
- (a) where substance and form differ, reporting the substance rather than the legal form of a transaction or event;
 - (b) in determining the substance of a transaction, considering all its aspects and implications, including the expectations of and motivations for, the transaction; and
 - (c) for the purposes of determining the substance of a transaction, viewing in aggregate a group or series of transactions that achieves, or is designed to achieve, an overall commercial effect.
- 1.5 An **Electricity Entity** must maintain accounting and reporting arrangements which:
- (a) enable financial statements and reports to be prepared for each **Prescribed Business**; and

- (b) provide information in the financial statements and reports that can be verified.
- 1.6 Information must be presented in financial statements and reports in the most understandable manner, without sacrificing relevance or reliability.
- 1.7 The financial statements and reports prepared by an **Electricity Entity** in compliance with its obligations under this **Code** must:
- (a) give a **fair and reasonable** view of the profit and loss and the balance sheet relating to each **Prescribed Business**;
 - (b) be capable of certification as such by an auditor when and if required by the **Commission**;
 - (c) be derived from the statutory accounts or their equivalent of the **Electricity Entity**; and
 - (d) contain the entirety of the activities of each **Prescribed Business** by:
 - (i) eliminating costs not related to each **Prescribed Business**;
 - (ii) not consolidating amounts from statutory accounts of different entities; and
 - (iii) consolidating or disaggregating statutory account amounts within an entity in order to prepare financial statements.
- 1.8 If some or all of the activities of an **Electricity Entity** are carried out by an entity that does not have statutory accounts, all financial representations of **Prescribed Business** activities by such an entity must be capable of being audited by an external independent auditor.
- 1.9 An **Electricity Entity** must present on a fair and consistent basis, from the accounting records that underlie its statutory accounts, the costs, revenues, assets employed and liabilities that may be reasonably attributed to each **Prescribed Business**.
- 1.10 The financial statements and reports of each **Prescribed Business** must, in so far as is reasonably practicable, be prepared in accordance with the accounting principles and policies applicable to the statutory accounts.
- 1.11 The financial statements and reports of each **Prescribed Business** must, in so far as is reasonably practicable, be prepared in a consistent manner so that the **Commission** can make comparisons between them over time.
- 1.12 An **Electricity Entity** must provide to the **Commission** full and detailed documentation of any policies and procedures that the **Electricity Entity** may have used to prepare the financial statements and reports, that are additional to or in place of, the accounting principles and policies used to prepare its statutory accounts.

- 1.13 The **Directors** of an **Electricity Entity** will be responsible for the purposes of this *Code* for the preparation and presentation of the financial statements and reports, and the information they contain.
- 1.14 The **Directors** of an **Electricity Entity** must ensure that the **Electricity Entity** keeps accounting records that:
- (a) correctly record and explain the transactions and financial position of each **Prescribed Business**;
 - (b) enable financial statements and reports to be prepared in accordance with this *Code*; and
 - (c) are capable of allowing an auditor to conveniently and properly form an opinion on the basis of those financial statements and reports as to the level of compliance by the **Electricity Entity** with the requirements of this Schedule, the **Accounting Procedures** and the **minimum ring-fencing requirements**.

2. Cost Allocation Principles

- 2.1 The **Cost Allocation Procedures** will only be approved by the **Commission** if:
- (a) they ensure compliance with the relevant **minimum ring-fencing requirements**;
 - (b) they are consistent with the accounting policies and procedures for other regulatory instruments; and
 - (c) except where variations have been approved by the **Commission**, they are in the same terms as the **AER-Approved Cost Allocation Method**.
- 2.2 The detailed principles and policies for attributing costs directly to, or allocating costs between **Prescribed Businesses** must be sufficiently detailed to enable:
- (a) the **Commission** to replicate the reported outcomes through the application of those principles and policies; and
 - (b) the **Electricity Entity** to demonstrate that it is meeting the requirements of these principles.
- 2.3 For the avoidance of doubt, paragraph 2.2 means that an **Electricity Entity** must include information on the following matters only to the extent necessary to enable the **Commission** to replicate its reported outcomes:
- (a) For directly attributable costs:
 - (i) the nature of each cost item;
 - (ii) the category of services to which the cost item is to be directly attributed;

- (iii) the characteristics of the cost item that associate it uniquely with a particular category of services in order to make it a directly attributable cost; and
 - (iv) how and where records will be maintained to enable the basis of attribution to be audited or otherwise verified by a third party, including the **Commission**.
- (b) For shared costs:
- (i) the nature of each cost item;
 - (ii) the categories of services between which each cost item is to be allocated;
 - (iii) the nature of the allocator, or allocators, to be used for allocating each cost item;
 - (iv) the reasons for selecting the allocator, or allocators, for each cost item and an explanation of why it is the most appropriate available allocator, or set of allocators, for the cost item;
 - (v) whether the numeric quantity or percentage of the allocator, or allocators, to be applied for each cost item will:
 - (A) remain unchanged over the relevant period; or
 - (B) change from time to time throughout the relevant period.
 - (vi) if paragraph (v)(A) applies:
 - (A) details of the numeric quantity or percentage of the allocator, or allocators; and
 - (B) an explanation of how the numeric quantity or percentage has been calculated, including where the data for determining this numeric quantity or percentage have been sourced.
 - (vii) if paragraph (v)(B) applies, an explanation of how the **Electricity Entity** intends to calculate the numeric quantity or percentage throughout the relevant period, including where the data for determining the changing numeric quantities or percentages are to be sourced; and
 - (viii) how and where records will be maintained to enable the allocation to be audited or otherwise verified by a third party, including the **Commission**.

2.4 An **Electricity Entity** must attribute costs directly to, or allocate costs between, **Prescribed Businesses** based on the substance of the underlying transaction or event.

2.5 Where the substance and legal form differ, the substance rather than the legal form of a transaction or event must be used as the basis of cost attribution or allocation.

Substance over form emphasises the economic substance of an event even though its legal form may provide a different result.

- 2.6 In determining the substance of a transaction or event, all of its aspects and implications must be considered, including the expectations of and motivations for, the transaction or event.
- 2.7 For the purposes of determining the substance of a transaction or event, a group or series of transactions or events that achieves, or is designed to achieve, an overall commercial effect must be viewed in aggregate.
- 2.8 Only costs that are directly attributable to the provision of a particular category of services may be directly attributed to that category of services.
- 2.9 A cost may be directly attributable to a **Prescribed Business** but not directly attributable to a particular category of services provided by the **Prescribed Business**. In this circumstance, the allocation of costs between categories of service may only be made in accordance with the following:
- (a) Shared costs incurred in providing several categories of service must be allocated between those categories using an appropriate causal allocator, except to the extent that:
 - (i) the shared costs are immaterial; or
 - (ii) a causal relationship cannot be established without undue cost and effort.
 - (b) If a shared cost is immaterial or a causal relationship cannot be established without undue cost and effort, then the **Electricity Entity** may allocate the shared cost to a particular category of services using a non-causal allocator provided that:
 - (i) the non-causal allocator accords with an AER-approved Cost Allocation Method;
 - (ii) the non-causal basis of allocation is approved in writing by the **Commission**; and
 - (iii) the **Electricity Entity** provides a supporting work paper to the **Commission** documenting for each such shared cost:
 - (A) the basis of allocation;
 - (B) the reason chosen for that basis;
 - (C) a demonstration that the shared cost is immaterial or an explanation of why no causal relationship could be established without undue cost and effort; and
 - (D) a numeric quantity or percentage of the non-causal allocator applied to each category of services and in total.

- (c) The bases of non-causal allocation will be subject to review by the **Commission**. The **Commission** expects only to accept a non-causal basis of allocation if the **Electricity Entity** can demonstrate that there is likely to be a strong positive correlation between the non-causal basis of allocation and the actual cause of the resource or service consumption or utilisation that those shared costs represent.
 - (d) An **Electricity Entity** is not permitted to allocate shared costs using an avoided cost approach without prior approval by the **Commission**.
- 2.10 An **Electricity Entity** must not allocate the same cost more than once. For the avoidance of doubt, this means that:
- (a) the same cost may not be treated as both a direct cost and a shared cost;
 - (b) a direct cost may only be attributed once to a single category of services;
 - (c) a shared cost may only be allocated once between categories of services; and
 - (d) an **Electricity Entity** may only recover the same cost once through the charges that it levies.
- 2.11 Costs that have been attributed or allocated to services must not be reattributed or reallocated to another service during the course of a regulatory control period (as defined in the **NER (NT)**).

3. Information Principles

- 3.1 The **Information Procedures** will set out the procedures to be followed by staff of an **Electricity Entity** involved in the conduct of a **Prescribed Business** for the purpose of identifying, and then appropriately handling, storing, sharing and publishing:
- (a) **Confidential Information**; and
 - (b) **Designated Information**.
- 3.2 The proposed **Information Procedures** must contain procedures for ensuring that the identification and the handling, storing, sharing and publishing of such information will not provide a competitive advantage to *the Related Contestable Business* over any **Competitor** of a **Related Contestable Business**.
- 3.3 The **Information Procedures** must set out the circumstances in which an **Electricity Entity** involved in the conduct of a **Prescribed Business** is permitted to disclose **Confidential Information**.
- 3.4 If an **Electricity Entity** proposes to allow the disclosure of **Designated Information** to a **Related Contestable Business** or an **Employee**, consultant, contractor or agent involved in the conduct of a **Related Contestable Business**, the **Information**

Procedures must identify how the **Designated Information** will also be made available to **Competitors** of the **Related Contestable Business**.

- 3.5 Without limiting the matters which may be covered in the **Information Procedures**, those **Procedures** should deal with the electronic, physical and procedural security measures that the **Electricity Entity** proposes to employ in respect of **Confidential Information** and **Designated Information** (including separation of office space, access to information systems and procedures for the minimisation of opportunities for preferential treatment or other unfair competitive advantage).

4. Scope of Principles

- 4.1 Nothing in these principles limit the matters which the **Commission** may take into account in approving or issuing any **Procedures** or imposing any conditions upon its approval of any **Procedures**.

Schedule 2: Transitional provisions

1. Transitional provisions for the third version of the Code

- (a) The **Accounting Procedures, Cost Allocation Procedures** and **Information Procedures** of an **Electricity Entity** which were approved by the **Commission** and were in force immediately before the **Commencement Date** (as defined in the third version of the **Code**):
 - (i) will continue in force and deemed to be approved **Procedures** for the purposes of clause 4 of this **Code**; and
 - (ii) will continue to be subject to any conditions relating to the **Commission's** approval of those **Procedures**.
- (b) An **Electricity Entity** referred to in clause 1(a) of this Schedule 2 is not required to comply with the requirements of clause 4.2 of this **Code** in relation to that approved **Procedure**.
- (c) This clause applies to the third version of the **Code**.

2. Transitional provisions for the fourth version of the Code

- (a) This clause applies to the fourth version of the **Code**.
- (b) In this clause:
 - (i) “**new clause 4**” means clause 4 of the **Code** as in effect on and from the **new Commencement Date**;
 - (ii) “**new clause 4.2(a)**” means clause 4.2(a) of the **Code** as in effect on and from the **new Commencement Date**;
 - (iii) “**new Commencement Date**” means the **Commencement Date** for the fourth version of this **Code**; and
 - (iv) “**old clause 1.6**” means clause 1.6 of the **Code** as in effect immediately before the **new Commencement Date**; and
 - (v) “**old guidelines**” means the Ring Fencing Guidelines (version no 1) dated 28 January 2009 made by the **Commission** pursuant to **old clause 1.6** of the **Code**.
- (c) With effect from the **new Commencement Date**, the **old guidelines** are revoked.
- (d) Subject to clause 2(e) of this Schedule, the **Procedures** of an **Electricity Entity** which were approved by the **Commission** and were in force immediately before the **new Commencement Date**:

(i) will continue in force and will be deemed to be approved for the purposes of **new clause 4**; and

(ii) will continue to be subject to any conditions relating to the **Commission's** approval of those **Procedures**,

on and from the **new Commencement Date** until the **Commission** approves updated or replacement **Procedures** under **new clause 4**.

(e) An **Electricity Entity** must review the **Procedures** referred to in clause 2(d) of this Schedule to take into account the changes made in the fourth version of this **Code** and must within the time prescribed under **new clause 4.2(a)** submit the **Procedures** to the **Commission** for approval in accordance with **new clause 4**.