

# Northern Territory Electricity Ring-fencing Code

Third Version  
1 January 2009



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## FOREWORD

This Third 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*;
- commences operation on 1 January 2009; and
- replaces the previous versions of the *Code*.

Notice of the making of the *Code* was published in the *Gazette* on 1 December 2008.

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### Amendment History

Version	Date made	Date of commencement
1	27 June 2001	1 July 2001
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## TABLE OF CONTENTS

FOREWORD	i
1. Introduction	1
2. Objectives and Scope	2
3. Minimum Ring-fencing Requirements	3
4. Compliance with Approved Procedures	7
5. Adding to or Amending this Code	9
6. Procedures for Adding To or Amending Ring-fencing Obligations	10
7. Compliance Procedures and Compliance Reporting	11
8. Exemption from Compliance with Specified Obligations	12
9. Outsourcing	14
10. Interpretation and determination of requirements under this <i>Code</i>	14
11. Preservation of Other Obligations and Compliance with Applicable Laws	17
12. Decision Making, Public Consultation and Disclosure of Information by the <i>Commission</i>	18
13. Interpretation	20
SCHEDULE 1	25
1. Accounting Principles	25
2. Cost Allocation Principles	26
3. Information Principles	28
4. Scope of Principles	28
SCHEDULE 2	29
1. Continuation of approved <i>Procedures</i>	29
SCHEDULE 3	30



# 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 third 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*.

### 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 carries on a *Prescribed Business* in the Northern Territory must also comply with any *guideline* published by the *Commission* in relation to this *Code*.
- (c) An *Electricity Entity* that is required to comply with this *Code* must also ensure that its *Associates* and *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 publish *guidelines* relating to the application or interpretation of, or matters arising under, this *Code*.
- (b) The *Commission* must publish a *guideline* by publishing a copy on the website of the *Commission* and by giving notice of the making of the *guideline* or a copy of the *guideline* to each *Electricity Entity* that is required to comply with the *guideline*.
- (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 and Scope

### 2.1 Objectives

- (a) The objectives of this *Code* are to:
- (i) promote and achieve the object of the *Act*;
  - (ii) promote and achieve the objects of the *ERA*;
  - (iii) without limiting paragraphs (i) and (ii) above, promote and safeguard competition and fair and efficient market conduct in the *Electricity Supply Industry* by promoting the simulation of competitive market conduct and preventing the misuse of monopoly power, for example by requiring *Electricity Entities* to implement measures which:
    - (A) prevent the misuse of monopoly power;
    - (B) simulate behaviour and outcomes likely to exist in a competitive market; and
    - (C) ensure that its *Related Contestable Businesses* are not treated by its *Prescribed Businesses* in a manner which confers a non-commercial discriminatory price or non-price advantage on the *Related Contestable Business* as compared to an *arm's length* third party in the same commercial circumstances; and
  - (iv) 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*.

### 2.2 Scope

- (a) The scope of this *Code* includes:
- (i) to require that an *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must comply with the *minimum ring-fencing requirements* specified in this *Code*;
  - (ii) to specify the *minimum ring-fencing requirements*;
  - (iii) to establish a mechanism for the development and approval of certain *Accounting Procedures, Cost Allocation Procedures* and *Information Procedures* with which an *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must comply;
  - (iv) to provide mechanisms for adding to or amending this *Code*;
  - (v) to provide procedures for adding to or amending the scope of the obligations under this *Code*;
  - (vi) to provide procedures for ensuring compliance with the requirements of this *Code*;
  - (vii) to provide procedures for compliance reporting;
  - (viii) to provide mechanisms for exempting an *Electricity Entity* from compliance with specified requirements of this *Code*; and
  - (ix) to empower the *Commission* to undertake public consultation in relation to certain of the specified requirements of 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:
    - (A) each *Prescribed Business*; and
    - (B) its *Electricity Business* as a whole,which have been prepared in accordance with the *Accounting Procedures* applying to that *Electricity Entity* from time to time under clause 4; and
  - (ii) allocate any costs that are shared between a *Prescribed Business* and a *Related Contestable Business* in a manner that:
    - (A) complies with the *Cost Allocation Procedures* applying to that *Electricity Entity* from time to time under clause 4; and
    - (B) is otherwise *fair and reasonable*.

#### 3.2 Related Party Goods and Services

- (a) An *Electricity Entity* that:
- (i) carries on both a *Prescribed Business* and a *Related Contestable Business* in the Northern Territory; and
  - (ii) provides any goods or services of a *Prescribed Business* to a *Related Contestable Business*; or
  - (iii) provides any goods or services of a *Related Contestable Business* to a *Prescribed Business*
- (“*related party goods and services*”),
- must ensure that the *related party goods and services* are provided on terms and conditions that are at *arm's length*.
- (b) If requested by the *Commission*, an *Electricity Entity* referred to in clause 3.2(a) must provide the *Commission* with reasonable particulars of the terms and conditions on which *related party goods and services* are provided within 30 days of receipt of the *Commission's* request.

#### 3.3 Provision of *nominated goods or services* of a *Prescribed Business* to a *Related Contestable Business*

- (a) An *Electricity Entity* that:
- (i) carries on a *Prescribed Business* and a *Related Contestable Business* in the Northern Territory; and
  - (ii) provides any *nominated goods or services* of a *Prescribed Business* to a *Related Contestable Business*,
- must:
- (iii) reduce to writing the terms and conditions (including prices and terms and conditions relating to prices) on which it supplies those *nominated goods or services* to a *Related Contestable Business* (“*related party terms*”);

- (iv) provide a copy of its *related party terms* to the *Commission*:
  - (A) initially, within 6 months of the *Commencement Date*; and
  - (B) if the *related party terms* are subsequently revised, prior to the date upon which any revisions take effect; and
- (v) ensure that those *nominated goods or services* are only supplied by the *Prescribed Business* to a *Related Contestable Business* on terms and conditions which are consistent with the *related party terms* (as if the *Prescribed Business* and the relevant *Related Contestable Business* were conducted by separate legal entities and the *related party terms* constituted a contract between the *Prescribed Business* and that *Related Contestable Business* for the supply of those goods and services).

### 3.4 Offers to provide *nominated goods or services* to other *Customers*

- (a) An *Electricity Entity* that:
  - (i) carries on a *Prescribed Business* in the Northern Territory;
  - (ii) provides any *nominated goods or services* of that *Prescribed Business* to a *Related Contestable Business*;must
  - (iii) also offer to supply the same type of *nominated goods and services* to other *Customers*; and
  - (iv) ensure that any offer to supply the same type of *nominated goods or services* to other *Customers* is on *comparable terms*.
- (b) *Comparable terms* are terms and conditions of an offer to supply the same type of *nominated goods or services* that either:
  - (i) are:
    - (A) no less favourable to the relevant *Customer* than the relevant *related party terms*; and
    - (B) non-discriminatory; or
  - (ii) have otherwise been approved by the *Commission* under either of clauses 3.4(c) or (e).
- (c) The *Commission* will approve proposed terms and conditions of supply that differ from the *related party terms* for the same type of *nominated goods or services* if:
  - (i) the differences result from the application of another *applicable law* to the supply of the relevant type of *nominated goods or services*; or
  - (ii) the *Commission* concludes that the differences are *fair and reasonable* in the circumstances having regard to the matters listed in clause 3.4(d).
- (d) In making a determination under clause 3.4(c), the *Commission* must take into account the following matters:
  - (i) the particular characteristics of the relevant type of *nominated goods or services*;
  - (ii) the commercial impact on the *Prescribed Business* of the proposed terms and conditions of supply having regard to:

- (A) the duration of the proposed contract for the supply of the relevant *nominated goods or services*;
- (B) the likely consumption of the *Prescribed Business*'s resources in fulfilling the proposed contract; or
- (C) the credit risks associated with the proposed contract;
- (iii) the requirements set out in clause 10.1(a); and
- (iv) the matters set out in section 6(2) of the *Act*.
- (e) The *Commission* may approve proposed terms and conditions of supply that differ from the *related party terms* for the same type of *nominated goods or services* if the *Commission* considers it would be otherwise *fair and reasonable* to do so in the circumstances.
- (f) The *Commission* may:
  - (i) impose conditions on any approval given for the purposes of this clause 3.4; and
  - (ii) revoke any approval or any condition attaching to an approval given under this clause 3.4 if the *Commission* considers that it is appropriate to do so.

### 3.5 Marketing Staff

- (a) An *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must ensure that:
  - (i) the *Marketing Staff* of its *Prescribed Businesses* are not also used as *Marketing Staff* for its *Related Contestable Businesses*; and
  - (ii) in the event that the *Marketing Staff* of its *Prescribed Businesses* do become or are found to become involved in a *Related Contestable Business*, the involvement immediately ceases.

### 3.6 Branding and marketing

- (a) An *Electricity Entity* that carries on a *Prescribed Business* and a *Related Contestable Business* in the Northern Territory must brand and market itself in a manner that minimises any potential for *Customer* confusion between the *Prescribed Business* and the *Related Contestable Business* of that *Electricity Entity*.

### 3.7 Claims about service standards

- (a) An *Electricity Entity* that carries on a *Prescribed Business* and a *Related Contestable Business* in the Northern Territory:
  - (i) must not market to *Customers* any goods or services in the *Electricity Supply Industry* offered or provided by the *Related Contestable Business* based on the reliability, quality, safety or other attribute of the goods or services provided by a *Prescribed Business* of that *Electricity Entity*; and
  - (ii) must confine any representations it makes to *Customers* about the service standards of any goods or services in the *Electricity Supply Industry* provided by the *Related Contestable Business* to those associated with those goods or services directly provided by the *Related Contestable Business*.

### 3.8 Websites

- (a) Where an *Electricity Entity* that carries on a *Prescribed Business* and a *Related Contestable Business* in the Northern Territory shares a website that *Electricity Entity* must:

- (i) identify on each page of the website which contains material in relation to the *Electricity Business* of that *Electricity Entity* whether the *Prescribed Business* or the *Related Contestable Business* is responsible for the contents of that page; and
- (ii) separate the contents of the website dealing with a *Prescribed Business* from the contents of the website dealing with the *Related Contestable Business* as far as practicable.

### 3.9 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 to a *Related Contestable Business* of that *Electricity Entity* if the disclosure of that *Confidential Information* is not prohibited 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.
- (b) An *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must ensure that any information (including *Confidential Information*):
  - (i) obtained by that *Electricity Entity* (or by its *Associates* or *Employees*) in the course of conducting a *Prescribed Business*; or
  - (ii) known to that *Electricity Entity* (or by its *Associates* or *Employees*) as a result of conducting a *Prescribed Business*; and
  - (iii) which might reasonably be expected to 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
  - (iv) which might reasonably be expected to 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*,is:
  - (v) used only for the purpose for which that information was provided or obtained;
  - (vi) only disclosed to a *Related Contestable Business* of that *Electricity Entity* if the disclosure of that information is not prohibited under the *Information Procedures* applying to that *Electricity Entity* under clause 4 from time to time and is otherwise permitted by law; and
  - (vii) otherwise dealt with in accordance with the *Information Procedures* applying to that *Electricity Entity* under clause 4 from time to time.

## 4. Compliance with Approved 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 final draft *Procedures* for approval by the *Commission*

- (a) An *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must within:
- (i) 3 months (in the case of the *Accounting Procedures* and the *Cost Allocation Procedures*); and
  - (ii) 6 months (in the case of the *Information Procedures*),
- of the *Commencement Date* submit to the *Commission* for approval final draft *Procedures* for its *Prescribed Businesses* developed in accordance with clause 4.3.

### 4.3 Development of final draft *Procedures*

- (a) The final 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;
  - (ii) otherwise consistent with the principles set out in Schedule 1 to this *Code* for each type of *Procedure*; and
  - (iii) developed in conjunction with the *Commission* so as to ensure that the final draft *Procedures* when submitted can be approved by the *Commission* without the need for substantial amendments.

### 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 (among other things):
- (i) the objectives of this *Code* set out in clause 2.1(a);
  - (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 *Procedures*.

### 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 including conditions:
- (i) requiring that specific amendments be made to the draft *Procedures* submitted by the *Electricity Entity*;
  - (ii) approving the *Procedures* for a fixed term;
  - (iii) requiring that the *Procedures* be reviewed at regular intervals by the *Commission* and the *Electricity Entity*;

- (iv) requiring that the *Procedures* must be resubmitted for approval following any change to the *Code* affecting the *Procedures* or when otherwise requested by the *Commission*;
- (v) requiring that the *Electricity Entity* report to the *Commission* concerning the implementation, application and/or compliance with the *Procedures* when requested by the *Commission*; and
- (vi) requiring that the *Electricity Entity* provide information and materials periodically to the *Commission* sufficient to enable the *Commission* to be satisfied, in the opinion of the *Commission*, that the conduct of the *Electricity Entity* in accordance with approved *Procedures* complies with the relevant *minimum ring-fencing requirements*.

#### 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 without further notice) 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) The *Commission* must notify an *Electricity Entity* within 30 days after receiving an application from the *Electricity Entity* to approve any *Procedures* (or any variation to the existing *Procedures*) of:
  - (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 *Electricity Entity* must implement any *Procedures* within 30 days after the date upon which they are approved by the *Commission*.

#### 4.9 Default by an *Electricity Entity*

- (a) If an *Electricity Entity*:
  - (i) fails to submit any of the draft *Procedures* to the *Commission* within the time period specified in clause 4.2 for the submission of that type of *Procedures*; or
  - (ii) submits draft *Procedures* to the *Commission* which require substantial amendment before they can be approved by the *Commission*,

the *Commission* may issue its own *Procedures* which will be deemed for the purposes of this *Code* to be the *Procedures* applying to that *Electricity Entity* until such time as appropriate draft *Procedures* are submitted to the *Commission* and approved.

#### 4.10 Compliance with requirements until *Procedures* are approved

- (a) Until such time as *Procedures* are approved or issued by the *Commission* under this clause 4, an *Electricity Entity* must comply with the principles set out in Schedule 1 to this *Code* for that type of *Procedures* as if those principles were the *Procedures*.

### 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* may request that the *Commission* 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 application without further notice) an application 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.

#### 5.3 Additional or varied obligations on an *Electricity Entity*

- (a) Without limiting the powers of the *Commission* under section 24 of the *Act* to vary or revoke the *Code*, the *Commission* may vary the *Code* to require that an *Electricity Entity* comply with an obligation in relation to the conduct of a *Prescribed Business* which differs from or is in addition to the minimum obligations set out in clauses 3 and 4 above (including by requiring the *Electricity Entity* to comply with *Procedures* issued by the *Commission* which vary or are additional to the *Procedures* approved or issued by the *Commission* under clause 4 from time to time).

#### 5.4 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, or impose any additional or varied obligation on an *Electricity Entity* under clause 5.3, the *Commission* will have regard to:
- (i) the objectives of this *Code* set out in clause 2.1(a);
  - (ii) the matters listed in section 6(2) of the *Act*; and
  - (iii) in the case of a variation to the *Code* which imposes an additional or varied obligation on a particular *Electricity Entity*, the general principle that the administrative cost to that *Electricity Entity* of complying with the additional or varied obligation should not, or should not be likely to in the opinion of the *Commission*, outweigh the benefits to the public from compliance with that additional or varied obligation.

#### 5.5 Consultation by *Commission* with *Electricity Entities*

- (a) Before varying or revoking this *Code*, or imposing any additional or varied obligation on an *Electricity Entity*, under this clause 5, the *Commission* will consult with each *Electricity Entity* in accordance with the procedure set out in clause 6 and otherwise comply with the other requirements of the *Act* and clause 6.

#### 5.6 Compliance with additional or varied obligations

- (a) An *Electricity Entity* must comply with any additional or varied obligation imposed upon that *Electricity Entity* under this clause 5 as and from the date upon which that obligation takes effect under section 24 of the *Act*.

## 6. Procedures for Adding To or Amending Ring-fencing Obligations

### 6.1 Notification by the *Commission* to interested persons

(a) The *Commission* must, before:

- (i) varying or revoking this *Code* (or any part of this *Code*); or
- (ii) imposing an additional or varied obligation on an *Electricity Entity*,

inform each person known to the *Commission* and whom the *Commission* believes has a sufficient interest in the matter that the *Commission* is considering varying or revoking this *Code* (or any part of this *Code*) or imposing an additional or varied obligation on an *Electricity Entity* by publishing a written notice which at least:

- (iii) states the nature of the proposed variation, revocation or additional or varied obligation; and
- (iv) requests submissions by a date specified in the notice (not being a date earlier than 30 days after the date of the notice).

(b) The *Commission* will also give a copy of any notice published in accordance with this clause 6.1 to each *Electricity Entity* to which the notice relates.

### 6.2 Consideration of submissions by the *Commission*

(a) The *Commission* must consider any submissions received by the date specified in the notice published under clause 6.1(a) and may (but is not obliged to) consider any submissions received after that date.

### 6.3 Draft decision

(a) Within 30 days (or such longer period as the *Commission* notifies) after the last day for submissions specified in the notice published under clause 6.1(a), the *Commission* must issue a draft decision stating whether or not it intends to proceed with the proposed variation, revocation or additional or varied obligation.

(b) The *Commission* must:

- (i) provide a copy of its draft decision to each *Electricity Entity*, any person who made a submission on the matter and any other person who requests a copy; and
- (ii) request submissions from persons to whom it provided the draft decision by a specified date (not being a date earlier than 30 days after the date the draft decision was issued).

### 6.4 Consideration of submissions on the draft decision

(a) The *Commission* must consider any submissions it receives by the date specified by the *Commission* under clause 6.3(b) and it may (but is not obliged to) consider any submissions received after that date.

### 6.5 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 issue a final decision stating:

- (i) whether or not it will proceed with the proposed variation, revocation or additional or varied obligation; and
- (ii) the final form of that proposed variation, revocation or additional or varied obligation.



- (b) A notice in relation to a variation, revocation or additional or varied obligation will have effect:
  - (i) 30 days after the notice is given to each relevant *Electricity Entity* and, where required, published in the *Gazette*; or
  - (ii) on such later date as the *Commission* specifies in the notice.

## 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, will 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 2.1(a);
  - (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, including conditions requiring that:
    - (A) the exemption be for a fixed term;
    - (B) the continuation of the exemption be subject to review by the *Commission* on such terms as the *Commission* considers appropriate in the circumstances;
    - (C) the *Electricity Entity* report to the *Commission* concerning any matter relating to the operation or impact of the exemption; and

- (D) the grant of the exemption be conditional upon the occurrence of a nominated event (for example, the variation of the *Code* to impose an additional or varied obligation on the *Electricity Entity* or the implementation of agreed compliance procedures).

#### 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 14 days after receipt of the application, inform each person known to the *Commission* whom the *Commission* believes has a sufficient interest in the matter, that the *Commission* has received the application by publishing a written notice which at least:
    - (A) identifies the *Electricity Entity* that has applied for the exemption and the nature of the requested exemption;
    - (B) states how copies of the application can be obtained; and
    - (C) requests submissions by a date specified in the notice (not being a date earlier than 30 days after the date of the notice).
- (b) The *Commission* must provide a copy of the application to any person within 7 days after the person requests a copy and pays any reasonable fee required by the *Commission*.
- (c) The *Commission* must consider any submissions received by the date specified in the notice published under clause 8.4(a)(ii) and it may (but is not obliged to) consider any submissions received after that date.

#### 8.5 Draft decision

- (a) Within 30 days (or such longer period as the *Commission* notifies) after the last day for submissions specified in the notice published under clause 8.4(a)(ii) the *Commission* must issue a draft decision stating whether or not it intends to grant the exemption sought in that application.
- (b) The *Commission* must:
  - (i) provide a copy of its draft decision to the relevant *Electricity Entity*, any person who made a submission on the matter and any other person who requests a copy; and
  - (ii) request submissions from persons to whom it provides the draft decision by a specified date (not being a date earlier than 30 days after the date the draft decision was issued).
- (c) The *Commission* must consider any submissions it receives by the date specified by the *Commission* under clause 8.5(b) 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 issue a 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 30 days after the decision is issued to the *Electricity Entity* or such later date as the *Commission* specifies in the notice.

### 8.7 **Prescribed Business definition**

- (a) An *Electricity Entity* may at any time request that the *Commission* consider whether the requirements set out in paragraph (b) of the definition of “*Prescribed Business*” in clause 13.2 have been satisfied.
- (b) A request under this clause 8.7 will be dealt with by the *Commission* in the same manner as an application for an exemption from compliance with any obligation (or component of an obligation) under clause 8.1.

## 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. Interpretation and determination of requirements under this Code

### 10.1 **Fair and reasonable**

- (a) Any question as to whether a thing is *fair and reasonable* for the purposes of this *Code* is to be decided by the *Commission*:
- (i) having regard to the objectives of this *Code* set out in clause 2.1(a);
  - (ii) having regard to the matters listed in section 6(2) of the *Act*;
  - (iii) in a manner which is consistent with the objects of the *Act* and the *ERA*; and
  - (iv) subject to clauses 10.1(a)(i), (ii) and (iii), otherwise on the basis of the *Commission's* opinion of the fairness and reasonableness of the matter.

### 10.2 **Non-discriminatory**

- (a) Any question as to whether a thing is *non-discriminatory* for the purposes of this *Code* is to be decided by the *Commission*:
- (i) having regard to the objectives of this *Code* set out in clause 2.1(a);

- (ii) having regard to the matters listed in section 6(2) of the *Act*;
  - (iii) in a manner which is consistent with the objects of the *Act* and the *ERA*; and
  - (iv) subject to clauses 10.2(a)(i), (ii) and (iii), otherwise on the basis of the *Commission's* opinion of the matter.
- (b) For the purposes of this *Code*, terms and conditions upon which goods or services are provided or offered or proposed to be provided or offered, are *non-discriminatory* if the terms or conditions:
- (i) do not unreasonably discriminate, or have the effect of creating unreasonable discrimination between:
    - (A) different *Customers* or classes of *Customers*; or
    - (B) *Customers* and a *Related Contestable Business* of an *Electricity Entity*; and
  - (ii) do not unreasonably disadvantage (whether competitively or financially) a *Customer* relative to a *Related Contestable Business* of an *Electricity Entity*,
- in relation to the provision of the relevant goods or services.

### 10.3 *Arm's length*

- (a) Any question as to whether a thing is at *arm's length* for the purposes of this *Code* is to be decided by the *Commission*:
- (i) having regard to the objectives of this *Code* set out in clause 2.1(a);
  - (ii) having regard to the matters listed in section 6(2) of the *Act*;
  - (iii) in a manner which is consistent with the objects of the *Act* and the *ERA*; and
  - (iv) subject to clauses 10.3(a)(i), (ii) and (iii), otherwise on the basis of the *Commission's* opinion of the matter.
- (b) Without limiting clause 10.3(a), for the purposes of this *Code*:
- (i) a transaction is at *arm's length* if at a minimum the parties to the transaction are unrelated and act severally and independently in forming the transaction and none of the parties has the ability to exert personal influence or control over another party in relation to the transaction; and
  - (ii) if a transaction is between related parties, the transaction is only at *arm's length* if in fact:
    - (A) the parties to the transaction have dealt with each other in relation to negotiation and conclusion of the transaction as if the parties were unrelated to each other;
    - (B) each party, in relation to the dealings between the parties in relation to the transaction, takes no account of the commercial circumstances of or likely benefits accruing to the other parties from the transaction other than to the extent that would be prudent between unrelated parties; and
    - (C) the outcome of the dealings between the parties in relation to the transaction is a matter of real bargaining between the parties.
- (c) For the purposes of this clause 10.3, parties to a transaction are related parties if a party is an *Associate* of another party to the transaction.

#### 10.4 Effect of disclosure of information

- (a) Any question as to whether:
- (i) information might reasonably be expected to materially affect the commercial interests of a *Competitor* of a *Related Contestable Business* of an *Electricity Entity* if disclosed to that *Related Contestable Business* for the purposes of clause 3.9(b)(iii) above; or
  - (ii) information might reasonably be expected to provide a competitive advantage to a *Related Contestable Business* of an *Electricity Entity* over a *Competitor* of that *Related Contestable Business* if disclosed to that *Related Contestable Business* without also being disclosed to that *Competitor* for the purposes of clause 3.9(b)(iv) above;

is to be determined by the *Commission*:

- (iii) having regard to the objectives of this *Code* set out in clause 2.1(a);
- (iv) having regard to the matters listed in section 6(2) of the *Act*;
- (v) in a manner which is consistent with the objects of the *Act* and the *ERA*; and
- (vi) subject to clauses 10.4(a)(iii), (iv) and (v), otherwise on the basis of the *Commission's* opinion of the matter.

#### 10.5 Determination of goods or services as *contestable* or *non-contestable*

- (a) Any question arising under this *Code* as to whether goods or services in the *Electricity Supply Industry* are *contestable* or *non-contestable* is to be determined by the *Commission*:
- (i) having regard to the objectives of this *Code* set out in clause 2.1(a);
  - (ii) having regard to the matters listed in section 6(2) of the *Act*;
  - (iii) in a manner which is consistent with the objects of the *Act* and the *ERA*; and
  - (iv) subject to clauses 10.5(a)(i), (ii) and (iii), otherwise on the basis of the *Commission's* opinion of the matter.

#### 10.6 Determination under paragraph (b) of the definition of *Prescribed Business*

- (a) Any question arising under this *Code* as to whether the requirements set out in paragraphs (b)(i) or (b)(ii) of the definition of *Prescribed Business* in clause 13.2 have been satisfied is to be determined by the *Commission*:
- (i) having regard to the objectives of this *Code* set out in clause 2.1(a);
  - (ii) having regard to the matters listed in section 6(2) of the *Act*;
  - (iii) in a manner which is consistent with the objects of the *Act* and the *ERA*; and
  - (iv) subject to clauses 10.6(a)(i), (ii) and (iii), otherwise on the basis of the *Commission's* opinion of the matter.

#### 10.7 Carrying on of a business

- (a) For the purposes of this *Code* an *Electricity Entity* is to be regarded as carrying on a *Prescribed Business* or a *Related Contestable Business* (as the case may be) 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 *Related Contestable Business*; or

- (ii) it otherwise engages in the activity of owning, controlling or operating the relevant *Prescribed Business* or *Related Contestable Business*.
- (b) Any question arising under this *Code* as to whether an *Electricity Entity* is to be regarded as carrying on a *Prescribed Business* or a *Related Contestable Business* is to be determined by the *Commission*:
  - (i) having regard to the objectives of this *Code* set out in clause 2.1(a);
  - (ii) having regard to the matters listed in section 6(2) of the *Act*;
  - (iii) in a manner which is consistent with the objects of the *Act* and the *ERA*; and
  - (iv) subject to clauses 10.7(b)(i), (ii) and (iii), otherwise on the basis of the *Commission's* opinion of the matter.

#### 10.8 Commission to determine matters arising under this clause

- (a) The *Commission* may from time to time in its discretion consider and decide any issue arising under this clause 10.
- (b) An:
  - (i) *Electricity Entity*; or
  - (ii) any other person who has, in the opinion of the *Commission*, a sufficient interest in the matter,may request that the *Commission* may make such a decision.

## 11. Preservation of Other Obligations and Compliance with Applicable Laws

### 11.1 No derogation from other obligations

- (a) Nothing in this *Code* 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*.

### 11.2 Compliance with Applicable Laws

- (a) The *Commission* must not by:
  - (i) a *guideline*;
  - (ii) a direction, notice or other instrument issued to an *Electricity Entity* under this *Code*;
  - (iii) the terms and conditions of an approval given by the *Commission* under this *Code*; or
  - (iv) any other decision made, or requirement determined by, the *Commission* under this *Code*,

impose a requirement on an *Electricity Entity* which contravenes or is inconsistent with another *applicable law*.

## 12. Decision Making, Public Consultation and Disclosure of Information by the *Commission*

### 12.1 Interpretation

- (a) For the purposes of this clause 12:
- (i) “*confidential material*” means *relevant material* which the *disclosing person* advises the *Commission* is of a confidential or commercially sensitive nature;
  - (ii) “*decision*” includes a decision, determination, approval, requirement, specification, standard, submission, obligation or request (whether draft or final) to be made, issued, given, imposed, reviewed or considered by the *Commission* under this *Code*;
  - (iii) “*decision making conduct*” means procedures or conduct of the *Commission* in connection with or for the purposes of making a *decision* or issuing a *document* under this *Code*;
  - (iv) “*disclosing person*” means a person who provides *relevant material* to the *Commission* under this *Code*;
  - (v) “*document*” includes a *guideline, Procedure, compliance procedures*, exemption, notice, direction or other instrument issued under or provided for in this *Code*.
  - (vi) “*matter for consultation*” means matters in connection with a *document* or *decision* that under this *Code* is a matter which is required to be or may be the subject of consultation under this clause; and
  - (vii) “*relevant material*” means information, material or a document provided to the *Commission* under or for the purposes of this *Code*.

### 12.2 Application of this clause

- (a) This clause 12 applies in addition to, and not in derogation of, the other provisions of this *Code*.
- (b) Where another provision of this *Code* provides that *decision making conduct* must occur in a particular manner the *Commission* must undertake the *decision making conduct* in that manner.
- (c) To the extent that it is possible to do so without acting inconsistently with another provision of this *Code*, the *Commission* may (but is not obliged to) undertake *decision making conduct* in accordance with this clause 12.
- (d) To the extent that there is inconsistency between this clause 12, or the application of this clause in any circumstances, and another provision of this *Code* in relation to *decision making conduct*:
- (i) this clause is to be construed as operating to the fullest extent possible in the circumstances consistently with the other provision; and
  - (ii) the other provision otherwise prevails over this clause to the extent of the inconsistency.

### 12.3 Decision making process and provision of information

- (a) Where under this *Code* the *Commission* is authorised or required to engage in *decision making conduct* the *Commission* may:



- (i) inform itself about any matter it considers relevant to the making of the *decision* or issue of the *document* in any way it thinks appropriate; and
  - (ii) by written notice require an *Electricity Entity* to provide the *Commission*, within the period specified in the notice, with *relevant material* specified in the notice in the possession or control of the *Electricity Entity* which, in the opinion of the *Commission*, is relevant to the making of the *decision* or to the issue of the *document* and which, in the opinion of the *Commission*, the *Commission* reasonably requires for the performance of its functions.
- (b) An *Electricity Entity* must comply with a notice issued under clause 12.3(a)(ii) of this *Code*.

#### 12.4 **Matters for consultation**

- (a) Where under this *Code* the *Commission* is authorised or required to engage in *decision making conduct* the *Commission* may, to the extent to which the *Commission* considers to be appropriate in the circumstances, treat the making of a *decision* or the issue of a *document* or matters in connection with the making of the *decision* or issue of the *document* as a *matter for consultation*.

#### 12.5 **Powers of Commission in relation to matters for consultation**

- (a) The *Commission* may take such steps as the *Commission* considers appropriate to consult in relation to a *matter for consultation* including by:
- (i) undertaking consultation of the public and interested persons in a manner determined by the *Commission* in relation to the *matter for consultation*;
  - (ii) making disclosure to the public and interested persons of information and materials (including without limitation *relevant material* provided to the *Commission* by an *Electricity Entity*) in relation to the *matter for consultation*;
  - (iii) producing and publishing an issues paper examining the issues relating to the *matter for consultation*;
  - (iv) inviting submissions from the public and interested persons in relation to the *matter for consultation*;
  - (v) making a draft decision if, in the opinion of the *Commission*, the circumstances warrant the making of a draft decision in relation to the *matter for consultation*;
  - (vi) inviting submissions from the public and interested persons in relation to a draft decision of the *Commission* in relation to the *matter for consultation*;
  - (vii) publishing submissions received by the *Commission* in relation to the *matter for consultation*;
  - (viii) making a final decision in relation to the *matter for consultation*;
  - (ix) publishing a final decision in relation to the *matter for consultation*;
  - (x) publishing the *decision* or *document* made or issued by the *Commission*;
  - (xi) publishing any document or thing referred to in a *decision* or *document* made or issued by the *Commission*; or
  - (xii) requiring an *Electricity Entity* to publish any document or thing referred to in a *decision* or *document* made or issued by the *Commission*.
- (b) Clause 12.5 (a) does not limit how the *Commission* may engage in *decision making conduct* in relation to a *matter for consultation*.

## 12.6 Treatment of confidential information

- (a) Subject to clause 12.6(b), where a *disclosing person* provides *relevant material* to the *Commission* in accordance with this *Code*, the *disclosing person* may, at the time at which the *relevant material* is provided, give notice to the *Commission* that the *relevant material* or part of the *relevant material* is *confidential material*.
- (b) A *disclosing person*:
- (i) may give notice to the *Commission* that *relevant material* is *confidential material* only if the *relevant material* is in fact of a confidential or commercially sensitive nature, and where only a part or parts of the *relevant material* is *confidential material*, the *disclosing person* may give notice only in respect of those parts; and
  - (ii) must in a notice under clause 12.6(b)(i) specify in reasonable detail the basis on which the *disclosing person* makes the claim that the *relevant material* is *confidential material*.
- (c) The *Commission* must not disclose or publish any *confidential material* to any other person unless disclosure is authorised under section 26(2) of the *Act*.
- (d) Nothing in this clause 12.6 will limit any obligation of an *Electricity Entity* under this *Code* to provide information to another party (including the *Commission*).

## 13. 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 the procedures of that name approved or issued by the *Commission* under clause 4 of this *Code*;

“*Act*” means the *Utilities Commission Act*;

“*applicable laws*” means legislation, regulations, codes or other instruments with which an *Electricity Entity* must comply under the terms of a *licence* issued to the *Electricity Entity*;

“*arm’s length*” has the meaning given to that term in clause 10.3 of this *Code*;

“*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*; and
- (b) an *Electricity Entity* that is not 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:
  - (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 later of 1 January 2009 or the date set out in the notice published in the *Gazette* making this *Code* as the date of commencement of this *Code*;

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

“*comparable terms*” has the meaning in clause 3.4(b) of this *Code*;

“*competition*” means either actual or potential rivalry or competition in relation to a business (or a component of a business) or activity in the *Electricity Supply Industry*;

“*Competitor*” means an entity (whether identifiable, actual or notional) which either actually or potentially may be in *competition* with an *Electricity Entity*;

“*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 *Associate* 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;

“*confidential material*” has the meaning in clause 12.1(a) of this *Code*;

“*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 the procedures of that name approved or issued by the *Commission* under clause 4 of this *Code*;

“*Customer*” means a person who engages (or proposes to engage) in the activity of purchasing goods or services from a *Prescribed Business* of an *Electricity Entity*;

“*decision*” has the meaning in clause 12.1(a) of this *Code*;

“*decision making conduct*” has the meaning in clause 12.1(a) of this *Code*;

“*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 *Government Owned Corporations Act*.

“*disclosing person*” has the meaning in clause 12.1(a) of this *Code*;

“*document*” has the meaning in clause 12.1(a) of this *Code*;

“*Electricity Business*” means in relation to an *Electricity Entity*, all of the businesses conducted by that *Electricity Entity* in the *Electricity Supply Industry*;

“*Electricity Entity*” has the same meaning as is given to that term in the *ERA*;

“*Electricity Supply Industry*” has the same meaning as is given to that term 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*;

“*fair and reasonable*” has the meaning in clause 10.1 of this *Code*;

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

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

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

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

“*Marketing Staff*” means an *Employee* of an *Electricity Entity* who is directly involved in the sale, promotion or advertising of any goods or services provided by the *Electricity Entity* to *Customers* (whether or not that *Employee* is involved in other functions) but does not include an *Employee* who is only involved in:

- (a) strategic decision making, including the executive officer or officers to whom *Marketing Staff* report either directly or indirectly; or
- (b) technical, administrative, accounting or service functions;

“*matter for consultation*” has the meaning in clause 12.1(a) of this *Code*;

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

“*NEMMCO*” means the National Electricity Market Management Company Limited ACN 072 010 327 and includes any body which takes over its functions after the *commencement date*;

“*nominated goods or services*” has the meaning in Schedule 3 of this *Code*;

“*non-contestable*” in relation to goods or services provided in the *Electricity Supply Industry* means goods or services other than *contestable* goods or services;

“*non-discriminatory*” has the meaning in clause 10.2 of this *Code*;

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

“*Prescribed Business*” means:

- (a) a business (or component of a business) carried on by an *Electricity Entity* which consists of:
  - (i) the operation of an electricity network and the provision of network access services in relation to that electricity network to *Customers*;
  - (ii) the sale of electricity to non-contestable *Customers*; or
  - (iii) a business (or component of a business) carried on by an *Electricity Entity* which consists of the provision of any other goods or services in the *Electricity Supply Industry*:
    - (A) to which the Regulations authorising the making of this *Code* extend to; and
    - (B) which the *Commission* determines in accordance with clause 10.5 are *non-contestable* goods or services; or
- (b) the business carried on by the *PWC* of generating electricity for sale (whether to third parties or notionally to another business division of the *PWC*) carried on by the *PWC*, until such time as the *Commission* is satisfied that:

- (i) the *PWC* no longer has a substantial degree of market power in the market for the generation of electricity for sale in respect of a particular geographical area; or
- (ii) this *Code* should no longer apply to that business; or
- (c) the provision of power system control and dispatch services in relation to any electricity network by the *PWC* (other than in its capacity as an agent of, or service provider to, *NEMMCO*);

“*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*;

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

“*related party goods and services*” has the meaning in clause 3.2(a) of this *Code*;

“*related party terms*” has the meaning in clause 3.3 of this *Code*; and

“*relevant material*” has the meaning in clause 12.1(a) of this *Code*.

### 13.3 Other interpretation principles

- (a) In this *Code*, unless the context otherwise requires:
  - (i) if a term is defined in the *ERA* or the *Act* and is not otherwise defined in clause 13.2, that term will have the same meaning as is given to that term under the *ERA* or the *Act*;
  - (ii) headings are for convenience only and do not affect the interpretation of this *Code*;
  - (iii) words importing the singular include the plural and vice versa;
  - (iv) words importing a gender include any gender;
  - (v) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency and vice versa;
  - (vi) a reference to any thing includes a part of that thing;
  - (vii) a reference to a clause, Schedule or part of a clause or Schedule is a reference to a clause, Schedule or part of this *Code*;
  - (viii) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, ordinances, by-laws and determinations issued under that statute;
  - (ix) other parts of speech and grammatical forms of a word or phrase defined in this *Code* have a corresponding meaning;
  - (x) mentioning an example or anything after the words “include”, “includes” or “including” will not limit what else might be included;

- (xi) a period of time:
  - (A) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
  - (B) which commences on a given day or the day of an act or event is to be calculated inclusive of that day;
- (xii) a reference to:
  - (A) a day is a reference to a period commencing immediately after midnight and ending the following midnight; and
  - (B) a month is a reference to a calendar month; and
- (xiii) a reference to an accounting term 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 repeal the instrument or decision; and
  - (ii) the power to amend or repeal the decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

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## SCHEDULE 1

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### 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* and its *Electricity Business* as a whole.
- 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 its *Electricity Business* as a whole; 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* and its *Electricity Business* as a whole;
  - (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* and its *Electricity Business* as a whole by:
  - (i) eliminating costs not related to each *Prescribed Business* and (where applicable) its *Electricity Business* as a whole;
  - (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* and its *Electricity Business* as a whole.
- 1.10 The financial statements and reports of each *Prescribed Business* and its *Electricity Business* as a whole 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* and its *Electricity Business* as a whole 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* and its *Electricity Business* as a whole;
  - (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;
  - (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.
- 2.2 The *Cost Allocation Procedures* must be presented to the *Commission* in a manner that ensures that the *Commission* may readily understand the methodologies and procedures comprising such *Procedures* and the resultant financial statements and reports prepared by the *Electricity Entity*.
- 2.3 The cost allocations prepared by the *Electricity Entity* in compliance with its obligations under this *Code* must be capable of certification as such by an auditor when and if required by the *Commission*.
- 2.4 For the purpose of financial statements and reports required to be provided to the *Commission* under this *Code* or for other regulatory purposes, the allocation of accounts between each *Prescribed Business* and the activities of the *Electricity Business* as a whole and across segments of a *Prescribed Business* are to be based on the principle that:
- (a) items which are directly attributable to a *Prescribed Business* or to the *Electricity Business* as a whole and segments of a *Prescribed Business* are assigned accordingly; and
- (b) items not directly attributable, are to be allocated to a *Prescribed Business* or to the *Electricity Business* as a whole and across segments of the *Prescribed Business* using an appropriate allocator, as indicated in following paragraphs.
- 2.5 An item may be directly attributable to a *Prescribed Business* or to the *Electricity Business* as a whole but not directly attributable to a segment of a *Prescribed Business*. In these circumstances, the allocation across segments of *Prescribed Businesses* will be made using an appropriate allocator as indicated in the following paragraphs.
- 2.6 Items that are not directly attributed either to a *Prescribed Business* or to the *Electricity Business* as a whole or to a segment of a *Prescribed Business* are to be allocated on a causation basis. Allocation based on avoidable cost is not permitted.
- 2.7 An *Electricity Entity* must produce for each item that has not been directly attributed to a *Prescribed Business* or the *Electricity Business* as a whole and/or *Prescribed Business* segment supporting paper work that includes:
- (a) the amounts that have been allocated to the *Prescribed Business* or the *Electricity Business* as a whole and/or *Prescribed Business* segment and amounts that have not been so allocated; and
- (b) the numeric quantity of each allocator.
- 2.8 If an item is immaterial and a causal relationship cannot be established without undue cost and effort, the *Electricity Entity* may effect an allocation of these items on a non-causal basis, provided it is accompanied by a supporting note documenting for each such item:
- (a) a defensible basis of allocation (which must not be avoidable cost);
- (b) the reason for choosing that basis; and
- (c) an explanation why no causal relationship could be established.
- 2.9 A non-causal basis of allocation may only be applied to the extent that:
- (a) the aggregate of all items subject to all non-causal bases of allocation is not material to the financial statements or reports; or
- (b) an *Electricity Entity* can demonstrate that there is likely to be a strong positive correlation between the non-causal basis and the actual cause of resource or service consumption or utilisation that those costs represent.
- 2.10 An item is material if its omission, misstatement or non-disclosure has the potential to prejudice the understanding of the financial position and nature of the *Prescribed Business* or the

*Electricity Business* as a whole (whichever is applicable), gained by reading the financial statements and reports.

- 2.11 All bases of allocation must be explained and documented in the *Cost Allocation Procedures*.

### 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, information that is either:

- (a) deemed to be *Confidential Information*; or
- (b) capable of materially affecting the commercial interests of a *Competitor* of a *Related Contestable Business*.

- 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 If an *Electricity Entity* proposes to allow the disclosure of information of the type referred to in clause 3.1 of this Schedule 1 to an employee, consultant, contractor or agent involved in the conduct of a *Related Contestable Business*, the *Information Procedures* must identify categories of information which will also be made available to *Competitors* of the *Related Contestable Business*.

- 3.4 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 the conduct of a *Prescribed Business* (including separation of office space, access to information systems and procedures for the minimisation of *Customer* confusion and opportunities for preferential treatment or other unfair competitive advantage).

### 4. Scope of Principles

- 4.1 Nothing in these principles will 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*.

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## SCHEDULE 2

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### Transitional provisions

#### 1. Continuation of approved *Procedures*

- (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*:
  - (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*.

## SCHEDULE 3

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### *Nominated goods and services*

- (a) The generation of electricity by *PWC* for sale or supply to an *Electricity Entity* issued with a licence authorising the selling of electricity (“*Wholesale Electricity Generation Services*”).
- (b) Network access services, as defined in clause 3 of the NT Electricity Networks (Third Party Access) Code (“*Network Access Services*”).