

PROPOSED AMENDMENTS TO THE NORTHERN TERRITORY ELECTRICITY RING-FENCING CODE

Background

1. The Northern Territory Electricity Ring-fencing Code (“the Code”) prohibits a ‘prescribed business’ from, among other things:
 - ☐ allocating any costs that are shared with a ‘related business’ in a manner other than in accordance with Cost Allocation Procedures approved by the Commission;
 - ☐ disclosing confidential or commercially-sensitive information to a ‘related business’ unless either that information is also disclosed to the competitors of the ‘related business’ or the disclosure of that information is not prohibited under Information Procedures approved by the Commission;
 - ☐ providing goods or services to, or receiving goods or services from, a ‘related business’ on anything other than a non-discriminatory arm’s length commercial basis; and
 - ☐ using the marketing staff of its ‘related businesses’ for its own marketing purposes.
2. These various prohibitions do not extend to the relationships among different ‘prescribed businesses’.
3. Therefore, the intent of the Code is only effective when the businesses concerned are appropriately classified as either a ‘prescribed business’ or a ‘related business’.

The issue of concern to the Commission

4. To date, both the Commission and PAWA have been interpreting the Code as obliging PAWA’s other prescribed business (Networks, System Control and Non-Contestable Retail) to treat PAWA Generation as a ‘related business’ for the purposes of the Code.
5. The Commission has recently become aware of a possible anomaly in the Code as to the obligations on PAWA’s other prescribed business (Networks, System Control and Non-Contestable Retail) in relation to PAWA Generation.
6. Specifically, clause 11 of the Code classifies PAWA Generation solely as a ‘prescribed business’. As currently drafted, the Code does not in fact oblige PAWA’s other prescribed business (Networks, System Control and Non-Contestable Retail) to treat PAWA Generation as a ‘related business’.
7. In some instances, however, PAWA Generation is clearly in the nature of a ‘related business’ under the Code. While PAWA Generation has no competitors in some segments of the electricity market in the Territory, in others (as recognised in part (b) to the definition of ‘prescribed business’ in clause 11) PAWA Generation does have direct competitors. Where it has direct competitors, PAWA Generation is in the nature of a ‘related business’ when it comes to PAWA’s other prescribed business (Networks, System Control and Non-Contestable Retail). The sharing of confidential or commercially-sensitive information, for example, between these prescribed businesses may not be appropriate.
8. As presently drafted, therefore, the Code is not effective in preventing, for example:
 - ☐ PAWA Networks from sharing commercially-sensitive information with PAWA Generation about a soon-to-be contestable customer’s load profile; or
 - ☐ PAWA System Control from sharing commercially-sensitive information with PAWA Generation about a competitor’s generation activities.

The proposed amendments

9. Notwithstanding PAWA's endeavours to conform with the spirit rather than the letter of the Code, it is appropriate that the Code be amended both to support PAWA's endeavours in this area and to ensure that no advantage could be taken *in future* of this anomaly as the Commission sees it.

10. The Commission proposes to amend the Code so that PAWA Generation – at least when it comes to PAWA Generation's activities in contestable markets – is classified as a 'related business' for the purposes of other 'prescribed businesses'. Specifically, it is proposed that the definition of 'related business' in clause 11 of the Code be amended as follows (where the underlined words are the words proposed to be inserted into the existing wording in the Code and the struck through words are proposed to be deleted):

"Related Business" means, in relation to a particular **Prescribed Business** of an **Electricity Entity**, any business carried on or activities undertaken in the **Electricity Supply Industry** by that **Electricity Entity** or an **Associate** of that **Electricity Entity** operating in a **Contestable Market** which do not form part of a ~~that~~ **Prescribed Business**.

11. This would require the addition of a definition of 'contestable market' as follows:

"Contestable Market" means a market in which more than one supplier is operating in the market or in which there are no statutory impediments to the entry of new suppliers into that market.

Call for submissions or comments

12. The Commission seeks submissions or comment regarding this proposed amendment to the Code, in accordance with clause 7 of the Code.

13. Submissions, comments or inquiries regarding issues raised in this paper should be directed in the first instance to the Executive Officer, Utilities Commission at any of the following addresses:

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