

2023 Review of RTA Gove Pty Limited Licence Exemption Document

Draft Decision

Draft decisions and reasoning
for proposed changes to the
licence exemption of RTA
Gove Pty Limited under
section 87 of the *Electricity
Reform Act 2000*

March 2024

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Abbreviations and acronyms

Access-regulated networks	Darwin-Katherine, Alice Springs and Tennant Creek electricity networks
Commission	Utilities Commission of the Northern Territory
DCMC	Department of the Chief Minister and Cabinet
EIP Code	Electricity Industry Performance Code
ER Act	<i>Electricity Reform Act 2000</i>
ER Regulations	Electricity Reform (Administration) Regulations 2000
ERS Code	Electricity Retail Supply Code
ES Act	<i>Electrical Safety Act 2022</i>
GSL	guaranteed service level
PWC	Power and Water Corporation
RTA Gove	RTA Gove Pty Limited, formerly Nabalco Pty Limited, formerly Alcan Gove Pty Limited
SAIDI	system average incident duration index
SAIFI	system average incident frequency index
SMMP	safety management and mitigation plan
UC Act	<i>Utilities Commission Act 2000</i>

Draft decision

In accordance with the *Utilities Commission Act 2000* and the *Electricity Reform Act 2000*, the Commission proposes to amend the licence exemption document issued to RTA Gove Pty Limited (RTA Gove, which has previously been named Nabalco Pty Limited and Alcan Gove Pty Limited) (the Exemption) as detailed in this Draft Decision document. The Draft Decision outlines the Commission's reasoning for the amendments it proposes to make to the Exemption. The Commission seeks feedback from stakeholders on its Draft Decision.

A short summary of the proposed draft decisions, set out by chapter, is presented below. Stakeholders are encouraged to read the full "Commission's position and reasons" section of each chapter for additional context and consideration of stakeholders submissions.

Administrative and typographical (Chapter 3)

The Commission proposes to make the following administrative and typographical amendments to the Exemption:

- amend the name in Recital clause 3 from Alcan Gove Pty Limited to RTA Gove Pty Limited.
- remove the reference to Gove Alumina Limited as a party to the lease in Recital clause 1.
- update the clause references in the Exemption to be more consistent with other issued exemptions and licences and current numbering conventions.

Scope of the Exemption (Chapter 4)

The Commission proposes a minor wording amendment to the scope of the Exemption in Schedule 1 to address a typographical error.

Provisions of information to the Utilities Commission (Chapter 5)

The Commission proposes to retain the current wording of clause 2(i) of the Exemption that, in effect, requires the exempt party to provide the Commission information necessary to perform its functions on request.

Life support equipment (Chapter 6)

The Commission proposes to amend clause 2(ii) of the Exemption to improve clarity and accord for recent amendments to the ERS Code in relation to life support equipment obligations.

Guaranteed Service Level Scheme (Chapter 7)

The Commission proposes to vary the Exemption to incorporate RTA Gove's current approved GSL performance indicators, with minor wording changes to make it explicit that planned network interruptions are excluded from the duration and frequency based GSLs (consistent with the original intent and that in the current EIP Code) and provide for escalation of the approved GSL payment amounts using the same method applied to the GSLs in Schedule 1 of the EIP Code. The existing GSL related to notice of unplanned network interruptions will remain.

The Commission proposes to vary the Exemption to make it explicit that RTA Gove must comply with the GSL related reporting requirements in Schedule 3 to the EIP Code.

The Commission intends to retain the GSL for the cumulative duration of unplanned network interruptions that requires a GSL payment at more than 40 hours in a financial year consistent with the Commission's approval of this Nhulunbuy-specific GSL in 2020.

The Commission intends to remove the GSL for "keeping appointments within 30 minutes of the time agreed with the small customer", consistent with its removal from the GSLs in the EIP Code.

Utilities Commission to investigate complaints (Chapter 8)

The Commission proposes to retain clause 3 of the Exemption with no amendment.

Approval of the Minister for variation or revocation of the Exemption (Chapter 9)

The Commission proposes to retain clause 4 of the Exemption with no amendment.

Review period of the Exemption document (Chapter 10)

The Commission proposes to amend the Exemption review period at clause 5 to a maximum of five yearly intervals, noting the Commission can review the Exemption sooner if it is considered necessary.

Internal dispute resolution obligations (Chapter 11)

The Commission proposes to amend the Exemption to require RTA Gove to comply with clauses 11.4 and 11.5 of the ERS Code, in relation to standard complaints and dispute resolution procedures and customer complaints. The Commission also proposes an associated three-month transitional provision for RTA Gove to develop, make and publish its required standard complaints and dispute resolution procedures and make any necessary updates to its website.

Hardship policy obligations (Chapter 12)

The Commission proposes to amend the Exemption to require RTA Gove to comply with clause 12 of the ERS Code, in relation to a customer hardship policy for residential customers. The Commission also proposes an associated transitional provision whereby RTA Gove must submit its proposed customer hardship policy to the Commission for approval within three months of commencement of the revised Exemption.

Family violence policy obligations (Chapter 13)

The Commission proposes to amend the Exemption to require RTA Gove to comply with clause 14 of the ERS Code, in relation to a family violence policy for residential customers affected by family violence. The Commission also proposes an associated transitional provision whereby RTA Gove must submit its proposed family violence policy to the Commission for approval within three months of commencement of the revised Exemption.

Network performance reporting (Chapter 14)

The Commission proposes to amend the Exemption to require RTA Gove to report the adjusted and unadjusted system average interruption duration index (SAIDI) and system average interruption frequency index (SAIFI) for the Nhulunbuy electricity network, but no other network performance reporting (other than GSL related, discussed in Chapter 7) in accordance with clause 5 (Reporting) and schedule 3 of the EIP Code and, as they relate to adjusted and unadjusted SAIDI and SAIFI performance indicators, clauses 6.1.1 (Data Quality, excluding audit requirements at 6.2 and 6.3) and 7 (Data Segmentation) of the EIP Code.

Retail performance reporting (Chapter 15)

The Commission is not proposing any changes to the Exemption to incorporate retail performance reporting obligations in the Exemption.

Safety Management and Mitigation Plan (Chapter 16)

The Commission proposes to include new Exemption conditions requiring RTA Gove to have an approved safety management and mitigation plan, similar to those which currently exist in generator and network operator licences.

1 | Introduction

Background

Context of the RTA Gove Pty Limited licence exemption

RTA Gove is the holder of an exemption document (the Exemption) granted under section 87 of the *Electricity Reform Act 2000* (ER Act), which exempts RTA Gove from the need to hold a licence under section 14(1) of the ER Act with respect to its operations in the electricity supply industry in the township of Nhulunbuy (including those surrounding areas within the limits of the network as existing on the date of issuance of the exemption). The Exemption was originally granted on 28 April 2005 with the approval of the then Treasurer (as regulatory Minister).

This Exemption was issued following the commencement of the ER Act and associated discussions at the time with non-Power and Water Corporation (PWC) generators and electricity providers in mining townships concerning ways to bring these entities within the ER Act's licencing regime in such a way as to not disrupt existing arrangements which had worked successfully for all parties prior to the commencement of the ER Act.

It is understood that at the time the Exemption was originally granted, it was intended to be a transitional arrangement while consideration was being given to potentially expanding operations at Gove and normalising the township of Nhulunbuy.

The electricity operations authorised by the Exemption include:

- generation of electricity at Nhulunbuy
- operation of electricity network infrastructure owned and operated by RTA Gove within the geographic area associated with the township of Nhulunbuy (including those surrounding areas within the limits of the network as existing on the date of issuance of the exemption)
- sale of electricity to customers located within the geographic area associated with the township of Nhulunbuy (including those surrounding areas within the limits of the network as existing on the date of issuance of the exemption).

Clause 5 of the Exemption document contains a requirement for the Exemption to be reviewed at three year intervals from the date of issuance and continues until the date on which Special Purpose Lease No 214 expires. The last review of the Exemption was completed in August 2020.

RTA Gove is ceasing operations in Nhulunbuy, with their departure expected by 2030. The Commission's review is intended to ensure the Exemption terms and conditions remain appropriate, noting any future owners and operators of electricity supply operations in Nhulunbuy may be required to be licenced.

The current review of the Exemption is being conducted publicly and focuses on the appropriateness of the terms and conditions of the Exemption. More specifically, this review will:

- reassess the Exemption's terms and conditions to ensure they are fit-for-purpose and appropriate for the circumstances
- consider options for alternative or additional terms and conditions.

The Draft Decision presents the Commission's proposed variations to the terms and conditions of the Exemption, which were informed by stakeholder feedback to the Consultation Paper.

Township of Nhulunbuy

Nhulunbuy is a town on the Gove Peninsula in north-east Arnhem Land, about 600km from Darwin. Nhulunbuy was established in the late 1960s to service a bauxite mine and alumina refinery operated by RTA Gove. Nhulunbuy is the fourth largest town in the Territory by population, with a population of 3,267¹ and is a services-hub for the north-east Arnhem region. Historically, Nhulunbuy's economy has centred on the bauxite mining activities. In 2007, Alcan Gove Pty Limited was acquired by Rio Tinto, becoming RTA Gove Pty Limited (RTA Gove).

On 29 November 2013, Rio Tinto announced the closure of the alumina refinery by July 2014 (the refinery ceased production in May 2014). In 2017, Rio Tinto further announced it expects Gove bauxite mining operations to cease by 2030 and it is currently implementing progressive closure activities, including the decommissioning and demolition of the refinery and progressive capping of the bauxite residue disposal areas.²

In 2020, the Gove Peninsula Futures Reference Group³ released the Statement on the Future of the Gove Peninsula⁴, where parties including the Rirratjingu Aboriginal Corporation, Gumatj Corporation, the Northern Land Council, the Northern Territory Government, the Australian Government and Rio Tinto committed to working together to achieve a positive future for Nhulunbuy and the Gove Peninsula after the Gove bauxite mine closes. One of the key streams of work identified by the Gove Peninsula Futures Reference Group to begin implementing its vision is the transition of essential services to new authorities, including power generation and distribution, water and sewerage.⁵

Consultation paper

On 26 September 2023, the Commission published the 2023 Review of Alcan Gove Pty Limited Exemption Document – Consultation Paper.⁶ The Consultation Paper raised issues with current terms and conditions and sought views on possible additional terms and conditions. The purpose of the Consultation Paper was to seek stakeholder views with 18 questions posed to help guide feedback. Stakeholders were also invited to provide feedback on any other matters relating to the Exemption.

The Consultation Paper was open for submissions for a six week period ending on 6 November 2023. A total of four submissions were received and are available on the Commission's website.⁷

Submissions were received from:

- Department of the Chief Minister and Cabinet (DCMC)
- NT WorkSafe
- Power and Water Corporation (PWC)
- Rio Tinto Gove Operations (RTA Gove)

The Commission also met with stakeholders in Darwin and Nhulunbuy to obtain feedback on aspects of the Exemption and related matters and discuss submissions. Stakeholders who met with the Commission included:

- Business representatives, organised through the NT Chamber of Commerce – East Arnhem Region

¹ Refer Australian Bureau of Statistics, 2021 Census available at <https://www.abs.gov.au/census/find-census-data/quickstats/2021/702041064>, accessed 1 February 2024

² For further information regarding the closure see <https://www.riotinto.com/en/sustainability/closure>

³ For further information regarding Gove Futures see <https://govefutures.nt.gov.au/>

⁴ Refer https://cmc.nt.gov.au/_data/assets/pdf_file/0006/701547/future-gove-statement.pdf

⁵ For further information see https://govefutures.nt.gov.au/_data/assets/pdf_file/0017/1145033/traditional-owner-vision-new-journey-together.pdf

⁶ Available at <https://utilicom.nt.gov.au/publications/reports-and-reviews/2023-review-of-alcan-gove-pty-ltd-exemption-document-consultation-paper>

⁷ Available at <https://utilicom.nt.gov.au/projects/projects/2023-review-of-alcan-gove-pty-ltd-exemption-document>

- Department of the Chief Minister and Cabinet (DCMC)
- Department of Territory Families, Housing and Communities
- Nhulunbuy Corporation
- NT WorkSafe
- RTA Gove

The Commission has considered stakeholders' submissions and feedback received in stakeholder meetings in making its draft decisions and this associated Draft Decision paper and draft amended Exemption.

Structure of this paper

The Draft Decision sets out the issues, stakeholders' views, and the Commission's reasoning and draft decisions on matters raised in the Consultation Paper. It follows the structure of the Consultation Paper and is arranged as follows:

- Chapter 2 describes RTA Gove's current licence exemption terms and conditions
- Chapters 3 to 10 consider whether the current terms and conditions are appropriate, and provide the Commission's draft decisions and associated reasons
- Chapters 11 to 16 consider the need for additional terms and conditions, and provide the Commission's draft decisions and associated reasons.

How to make a submission on the Draft Decision

All interested parties (stakeholders) are invited to make submissions on matters raised in the Draft Decision by **5pm Wednesday, 17 April 2024**.

To facilitate publication, submissions should be provided electronically by email to utilities.commission@nt.gov.au in Adobe Acrobat or Microsoft Word format.

Stakeholders need only respond to matters relevant to their areas of expertise or interest. The Commission encourages stakeholders to include sufficient explanatory detail in their responses to any matters discussed in the Draft Decision.

Any questions regarding the Draft Decision or the review should be directed to the Commission by email to utilities.commission@nt.gov.au.

Confidentiality

In the interests of transparency, the Commission will make all submissions publicly available on its website, with the exclusion of confidential information.

Confidential information is defined in section 26 of the *Utilities Commission Act 2000* (UC Act) as information that could affect the competitive position of a licensed entity or other person or is commercially sensitive for some other reason.

Submissions must clearly specify any information that a respondent considers confidential and advise the Commission why they would like the information treated as confidential. A version of the submission suitable for publication (that is, with any confidential information removed) should also be submitted to the Commission.

The Commission may also exercise its discretion not to publish any submission based on its content, such as submissions containing statements which may be offensive or defamatory.

Process for reaching a final decision

Following this further and final round of consultation, the Commission will consider and decide whether changes are needed in relation to its proposed variations to the terms and conditions of the Exemption, and will write to the Regulatory Minister. Once approval for any variation is obtained from the Minister, the Commission will publish its Final Decision and reasons, and issue the varied Exemption to RTA Gove. Subject to the Minister's timing, the Commission's Final Decision is expected to be published in mid-2024.

Stage	Expected timing
Draft decision released	March 2024
Public consultation	March – May 2024
Approval sought from Minister	mid-2024
Final decision released	mid-2024

2 | Current terms and conditions of the Exemption

RTA Gove's current Exemption includes five clauses detailing the scope of the exempted operations and the conditions applying to it, which are:

1. Pursuant to section 14(2) of the *Electricity Reform Act 2000* ("the Act"), Alcan Gove Pty Limited is exempt from the need to hold a licence under section 14(1) of the Act by virtue of section 87 of the Act and this exemption document, with respect to those operations in the electricity supply industry set out in schedule 1.
2. In accordance with section 87(1) of the Act, this exemption is subject to the following conditions:
 - i. that the exempt party from time to time provide the Commission, in a manner and form to be determined by the Commission, such information necessary to the performance of its functions under any applicable laws that the Commission may request
 - ii. that the exempt party comply with Clause 10 (Life support equipment) of the Electricity Retail Supply Code as if it were licensed by the Utilities Commission under Part 3 of the Act to operate as a network provider and retailer and comply with the life support procedures for Nhulunbuy and surrounding areas approved by the Utilities Commission under clause 10.7 and as if version 3 of the Electricity Retail Supply Code commenced on the date of commencement of this amended exemption
 - iii. that within 1 month of the commencement of this amended exemption the exempt party submit to the Utilities Commission for approval proposed guaranteed service levels for the performance indicators listed in Schedule 1 Table 1 of the Electricity Industry Performance Code
 - iv. that the exempt party comply with Clause 4 (Guaranteed Service Level Scheme) and, as they relate to the Guaranteed Service Level Scheme, Clauses 5 (Reporting), 6 (Data Quality) and 7 (Data Segmentation) of the Electricity Industry Performance Code excluding the guaranteed service levels in Schedule 1 Table 1 and replaced by those guaranteed service levels approved by the Commission in accordance with clause 2(iii) of this exemption, as if the party were licensed by the Utilities Commission under Part 3 of the Act to operate as a network provider and retailer, and as if the party provides network services and retail services to its electricity customers in the regulated network.
3. Pursuant to section 87(2) of the Act, the exempt party is to be treated as an electricity entity for the purposes of sections 48 to 51 of the Act.
4. Under section 87(3) of the Act, this exemption document, with the approval of the Minister, may be varied or revoked by the Commission by notice in writing.
5. This exemption document will be reviewed at 3 year intervals from the date of issuance and continues until the date on which Special Purpose Lease No 214 expires.

The operations in the electricity supply industry covered by the Exemption are contained in Schedule 1 to the Exemption.⁸

⁸ Available at https://utilicom.nt.gov.au/_data/assets/pdf_file/0006/917871/Licence-Exemption-Alcan-Gove-Pty-Ltd.pdf

3 | Administrative and typographical

Background

The structure and form of the Exemption had not been reviewed since it was originally issued in 2005. The Consultation Paper advised the Commission does not believe that significant changes to the form or structure of the Exemption are required, but there may be administrative and typographical changes that should be considered.

Submissions

The Consultation Paper sought feedback from stakeholders on whether there is a need to make any administrative or typographical changes to RTA Gove's licence exemption. Responses were received from PWC and RTA Gove.

PWC advised it had no significant concerns with the current drafting, but stated clause 2(iv) was challenging to read and recommended it be simplified.

RTA Gove advised the references to Alcan Gove Pty Limited should be updated to RTA Gove Pty Limited and that Special Purpose Lease No 214 is now held solely by Swiss Aluminium Australia Limited.

Commission's position and reasons

The Commission has considered PWC's feedback in relation to readability along with other changes to Exemption clause 2(iv), which is discussed in Chapter 7 as part of the Guaranteed Service Level (GSL) Scheme.

The Commission proposes to make the following administrative and typographical amendments to the Exemption:

- amend the name in Recital clause 3 from Alcan Gove Pty Limited to RTA Gove Pty Limited. The Commission has confirmed the proposed change is appropriate through checks of the Australian Government's Australian Business Register and the Australian Securities and Investments Commission
- remove the reference to Gove Alumina Limited as a party to the lease in Recital clause 1. The Commission has confirmed the proposed change is appropriate through sighting the *Record of Administrative Interests and Information* from the Territory Government's Titles System dated 17 January 2024
- update the clause references in the Exemption to be more consistent with other issued exemptions and licences and current numbering conventions.

4 | Scope of the Exemption

Background

Clause 1 of the Exemption exempts RTA Gove from the requirement to hold a licence to operate in the electricity supply industry pursuant to section 14(2) of the ER Act and in accordance with section 87 of the ER Act. The scope of the current Exemption covers the electricity operations specified in Schedule 1 to the Exemption, namely:

- generation of electricity at Nhulunbuy
- operation of electricity network infrastructure owned and operated by the exempt party within the geographic area associated with the township of Nhulunbuy (including those surrounding areas with the limits of the network as existing on the date of issuance of the exemption)
- sale of electricity to customers located within the geographic area associated with the township of Nhulunbuy (including those surrounding areas with the limits of the network as existing on the date of issuance of the exemption).

The Commission notes the Exemption is atypical in that the generation operations authorised by the Exemption do not refer to an explicit list or description of generation plant, as is the case in most generation licences issued by the Commission.⁹ While this is inconsistent with the Commission's current approach, the Commission does not consider there is a need to amend the Exemption to list RTA Gove's generation plant given the current arrangements are not permanent. However, it is the Commission's expectation that any non-RTA Gove electricity supply operations in Nhulunbuy will be required to be licenced and include a level of detail consistent with current licences.

The Consultation Paper advised the Commission was not aware of a need to vary the scope of the Exemption or the authorised operations specified in Schedule 1 to the Exemption and asked stakeholders if they had a differing view.

Submissions

Responses to the questions in the Consultation Paper in relation to the scope of the Exemption were received from DCMC, PWC and RTA Gove.

DCMC's response supported the addition of potential conditions to the Exemption Document that improve alignment with licencing requirements, however none related to the scope of the Exemption.

PWC was of the view that there is no need to vary the scope of the proposed Exemption at this present time.

RTA Gove advised the geographical description of the network and customer base remains accurate and noted the generation facilities currently operated to supply electricity are located at the mining site proximate to Nhulunbuy (not strictly within Nhulunbuy itself). RTA Gove suggested for clarification purposes, to include wording in the first dot point of Schedule 1 to reflect that generation may be undertaken within the limits of the network.

Commission's position and reasons

The Commission does not consider an amendment to the wording for the generation bullet point in Schedule 1 is necessary for it to be updated to specify that it includes "those surrounding areas within the limits of the network as existing on the date of issuance of this exemption", noting that RTA Gove advised that the geographical description remains accurate.

⁹ For example, see Schedule 2 to EDL Jabiru Pty Limited's generation license at <https://utilicom.nt.gov.au/publications/licences-on-issue/licence-generation-edl-jabiru-pty-ltd>

The Commission, however, proposes a minor wording amendment to the scope of the Exemption in Schedule 1 to address a typographical error. Specifically, to specify that the operation and sale bullet points include “those surrounding areas within the limits of the network”, rather than the current description of “those surrounding areas with the limits of the network”.

5 | Provision of information to the Utilities Commission

Background

Clause 2(i) of the Exemption requires that RTA Gove must from time to time provide the Commission, in a manner and form to be determined by the Commission, such information necessary to the performance of its functions under any applicable laws that the Commission may request.

This is a standard condition that the Commission includes in all electricity supply industry licences in accordance with section 24(4) of the ER Act. The Commission considers that a condition for the licensee, or exempted entity, to provide information to the Commission is necessary for the performance of its regulatory functions under the UC and ER Acts.

The Consultation Paper asked stakeholders whether any variation to clause 2(i) of the Exemption (relating to provision of information to the Commission) is required.

Submissions

Responses to the questions in the Consultation Paper were received from PWC and RTA Gove.

PWC did not consider a variation is required to this clause. PWC is of the view that it is prudent to require the exempt party to provide such information to the regulator, mainly where obligations apply to the exempt party.

RTA Gove also do not believe there is a need to vary clause 2(i) from its current wording.

Commission's position and reasons

The Commission proposes to retain the current wording of clause 2(i) of the Exemption, noting it is sufficient to allow the Commission to obtain information as might be necessary for it to perform its regulatory functions.

6 | Life support equipment

Background

Clause 2(ii) of the Exemption in effect requires RTA Gove to comply with clause 10 (Life support equipment) of the ERS Code as if it were licensed by the Commission to operate as a network provider and retailer, and to comply with life support equipment procedures for Nhulunbuy and surrounding areas that are approved by the Commission under clause 10.7 of the ERS Code. The condition was included in the Exemption in August 2020, following the previous review of the Exemption.

Clause 10.7 of the ERS Code sets out provisions to protect customers requiring life support equipment at their premises outside the major centres of Darwin-Katherine, Alice Springs and Tennant Creek (where Network Access Legislation does not apply).

Clause 10.7.2 of the ERS Code requires a retailer and a network provider to develop and submit to the Commission for approval, within three months of the commencement of version 3 of the ERS Code, life support equipment procedures for each geographical area in which it sells electricity to customers for domestic use, or operates an electricity network that provides services to customers for domestic use, that seek to achieve similar outcomes to the life support equipment provisions in place for customers connected to the Darwin-Katherine, Alice Springs and Tennant Creek power systems. Key elements the Commission expects to be contained in a life support procedure include:

- registration of life support customers
- not arranging for the de-energisation (also called “disconnection”) of the premises, except in the case of an interruption
- in the case of planned interruptions, giving the customer at least four business days written notice, by any appropriate means, of the interruption to supply at the premises, including the date, time and duration of the interruption, along with a 24 hour telephone number for enquiries (the charge of which is to be no more than the cost of a local call).

The Commission approved RTA Gove’s life support equipment procedures submitted under clause 10.7.2 of the ERS Code, for Nhulunbuy and surrounding areas, on 9 December 2020. RTA Gove’s life support customer procedure is published on Nhulunbuy Corporation’s website¹⁰.

The Commission has recently amended clause 10.7 of the ERS Code to make it explicit that retailers and network providers must comply with their approved life support equipment procedures (clause 10.7.10) and to include a new obligation for retailers and network providers to review their life support equipment procedures at least once every three years and following a breach of approved life support equipment procedures.

The Consultation Paper asked stakeholders to consider whether amendment to condition 2(ii) of the Exemption is appropriate to improve clarity and to accord for recent amendments to the ERS Code. While the Commission considers it is appropriate to retain the condition for RTA Gove to comply with life support equipment provisions in the ERS Code in the Exemption, given the clause 10.7 amendments in the ERS Code the Commission considers it may be appropriate to vary the condition to improve clarity and ensure it is contemporary and fit-for-purpose.

A potential option the Commission is considering is a variation to condition 2.ii to read as follows:

- 2(b) *that the exempt party comply with Clause 10 (Life support equipment) of the Electricity Retail Supply Code (as amended from time to time) as if it were licensed by the Utilities Commission under Part 3 of the Act to operate as a network provider and retailer*

¹⁰ Available at <https://ncl.net.au/our-services/utilities/life-support-equipment-customer-procedure>

Submissions

Responses to the questions in the Consultation Paper were received from DCMC, PWC and RTA Gove. DCMC's submission was supportive of amendment to clause 2(ii) of the Exemption. DCMC was of the view that the proposed amendment not only captures the amendment to clause 10.7 of the ERS Code but will also accommodate future changes to the ERS Code without requiring further amendment of the Exemption.

PWC supported the amendment on the basis that it may provide vulnerable customers in Nhulunbuy with protections to secure their health and well-being.

RTA Gove commented that as their life support equipment procedure was recently approved by the Commission, it believes the document remains fit for its intended purpose.

On meeting stakeholders in Nhulunbuy, Commission staff were alerted to the fact that there was very little awareness of the availability of life support protections for customers. Neither RTA Gove nor Nhulunbuy Corporation had published information on their websites regarding life support equipment customer protections at the time of the Commission's visit in December 2023. After Commission staff raised this non-compliance with RTA Gove, the information was subsequently published on Nhulunbuy Corporation's website. This should increase awareness and improve access to these protections for relevant customers.

Commission's position and reasons

The Commission proposes to amend clause 2(ii) to improve clarity and accord for recent amendments to the ERS Code in relation to life support equipment obligations, as outlined in the Consultation Paper. Stakeholders were supportive of this amendment, which continues to provide protections for Nhulunbuy life support equipment customers.

7 | Guaranteed Service Level Scheme

Background

Clauses 2(iii) and 2(iv) of the Exemption provide for the application of the EIP Code's Guaranteed Service Level (GSL) Scheme in Nhulunbuy. These clauses were included in the Exemption in 2020, following from the Commission's previous review of the Exemption.

The EIP Code provides for a GSL Scheme whereby payments are made to eligible customers by a network provider where performance does not meet the defined standard of service. GSL payments are not intended to be compensation, but rather a recognition of poor service. GSL payments provide an incentive for a network provider to improve service to its worst served customers. The GSL Scheme in the EIP Code applies only to licensed network entities operating in a regulated network (defined in the EIP Code as an electricity network that is subject to network access legislation - these are the Darwin-Katherine, Alice Springs and Tennant Creek electricity networks). Under clause 5 of the EIP Code, network entities are required to annually report their actual performance against the GSLs, including payments made to eligible customers.

Although RTA Gove does not hold a licence to participate in the electricity supply industry, and does not operate in a regulated network, it is required to comply with the GSL Scheme in the EIP Code as a condition of its Exemption.

Clause 2(iii) of the Exemption sees the GSLs listed in Schedule 1 Table 1 of the EIP Code replaced with Commission-approved GSLs specific to RTA Gove in Nhulunbuy. The purpose of this condition is to provide for flexibility in establishing appropriate GSLs for the circumstances of the Nhulunbuy electricity network, noting it is not appropriate for a network entity to determine its own GSLs.

Clause 2(iv) of the Exemption requires RTA Gove to comply with clause 4 (GSL Scheme) and, as they relate to the GSL Scheme, clauses 5 (Reporting), 6 (Data Quality) and 7 (Data Segmentation) of the EIP Code excluding the GSLs in Schedule 1 Table 1 and replaced by those GSLs approved by the Commission in accordance with clause 2(iii) of the Exemption, as if the party were licensed by the Commission under Part 3 of the ER Act to operate as a network provider and retailer, and as if RTA Gove provides network services and retail services to its electricity customers in the regulated network. The effect of this condition is that RTA Gove must comply with the GSL Scheme in the EIP Code, including annual GSL performance reporting, in relation to its approved GSLs.¹¹

In varying the Exemption to provide for application of the GSL Scheme in 2020, the Commission reasoned that requirements to report against GSL performance and make payments to relevant customers would provide an incentive for RTA Gove to maintain and improve its level of service, as well as improve transparency for stakeholders.

RTA Gove's current GSLs¹² were approved by the Commission on 25 September 2020 and the payment amounts are set up to and including 30 June 2024. The GSL performance indicators are:

- where at least two business days' notice prior to the commencement of the day upon which the planned interruption will occur isn't provided, a penalty per event
- where the duration of a single interruption is more than 12 hours and less than 20 hours, a penalty per event
- where the duration of a single interruption is more than 20 hours, a penalty per event
- when more than 12 interruptions take place in a financial year, a penalty amount per financial year
- when more than 40 hours of interruptions occur in a financial year, a penalty amount per financial year

¹¹ Available at <https://utilicom.nt.gov.au/publications/approvals-decisions-and-determinations/final-decision-electricity-industry-performance-code-review>

¹² Available at <https://utilicom.nt.gov.au/publications/approvals-decisions-and-determinations/approved-guaranteed-service-levels-alcan-gove-pty-ltd>

- when connection and reconnection of a customer’s premises are not undertaken within the performance indicators, a per day late penalty amount, capped at a maximum amount
- when not keeping appointments with a small customer within 30 minutes of the time agreed, a penalty per event.

The approved GSL performance indicators in relation to Nhulunbuy are consistent with that in Schedule 1 Table 1 of the EIP Code that apply for the regulated networks, except for some minor wording as a result of recent amendments to the EIP Code that were made to make it explicit that planned network interruptions are excluded from duration and frequency based GSLs and the performance indicator in relation to the cumulative duration of interruptions. In the regulated networks, the cumulative duration of unplanned network interruptions that requires a GSL payment is more than 20 hours in a financial year. For Nhulunbuy, the cumulative duration is 40 hours.

In accordance with clause 5.5 of the EIP Code, the Commission has published annual Township of Nhulunbuy GSL Reports¹³ which make an assessment of RTA Gove’s reported GSL performance for the relevant financial year, including frequency and the amount paid to customers.

On 8 June 2023 the Commission published its EIP Code Review Final Decision¹⁴, including its method to adjust GSL payment amounts in Schedule 1 Table 1 for forward years from 1 July 2024. The method accounts for actual Darwin consumer price index, then forecasts inflation using the Australian Energy Regulator method to calculate future GSL payment amounts for five years, and then applies an inflation adjustment of 2.5% for any remaining years until the end of the next regulatory control period (30 June 2029). The Commission is considering variation to clause 2(iii) of the Exemption, or the inclusion of an additional condition, to provide for the setting of GSLs and payment amounts for future years.

The EIP Code Review Final Decision¹⁵ also saw the removal of the GSL for “keeping appointments within 30 minutes of the time agreed with the small customer”.

With the current drafting of clause 2(iv) of the Exemption, RTA Gove’s reporting obligations are restricted to reporting against the GSL Scheme, rather than the full suite of performance indicators for network providers contained in Schedules 1 and 3 of the EIP Code, and for generators and retailers in Schedules 2 and 4, respectively. This has resulted in a potential gap or lack of clarity in the GSL reporting requirements imposed on RTA Gove, as there are GSL reporting requirements provided in Schedule 3 (Network Services Performance Indicators) at S.3.7 (Guaranteed Service Performance indicators) and S3.8 (Exclusions) of the EIP Code. Accordingly, the Commission is considering varying the Exemption to make it explicit that RTA Gove must comply with the GSL related reporting requirements in Schedule 3 to the EIP Code.

The Consultation Paper asked stakeholders to consider whether:

- the application of the GSL Scheme in Nhulunbuy is appropriate for the circumstances
- the GSL Scheme effectively holds RTA Gove to account for its network performance in Nhulunbuy, and incentivises maintenance and improvements in network performance for consumers in Nhulunbuy
- there is an alternative method the Commission should consider to provide a mechanism enabling amendment to RTA Gove’s current approved GSL performance indicators and payment amounts
- it is appropriate to vary RTA Gove’s licence exemption document to provide for escalation of the approved GSL payment amounts for RTA Gove using the same method applied to the GSLs in

¹³ Available at <https://utilicom.nt.gov.au/electricity/reporting/township-of-nhulunbuy-guaranteed-service-level-performance-report>

¹⁴ Available at <https://utilicom.nt.gov.au/publications/approvals-decisions-and-determinations/final-decision-electricity-industry-performance-code-review>

¹⁵ Available at <https://utilicom.nt.gov.au/publications/approvals-decisions-and-determinations/final-decision-electricity-industry-performance-code-review>

Schedule 1 Table 1 of the EIP Code, or would it be more appropriate for RTA Gove to propose new bespoke GSL payment amounts for the Commission's approval every five years

- RTA Gove's exemption should be varied to require RTA Gove to comply with GSL related reporting requirements contained in Schedule 3 (Network Services Performance Indicators) to the EIP Code.

Submissions

Reponses to the questions in the Consultation Paper were received from DCMC, PWC and RTA Gove. Stakeholder meetings also provided insights into the operation of the GSL Scheme in Nhulunbuy.

DCMC stated it is supportive of the 2020 introduction of the GSLs to the requirements under the Exemption. However, it recognised there are substantial differences in the commercial and operational costs associated with RTA Gove's electricity operations and, therefore, it may be appropriate for RTA Gove to propose a bespoke GSL payment model which varies from that designed for Darwin-Katherine, Alice Springs and Tennant Creek networks. In considering any bespoke payment option, DCMC stated it would be appropriate that the payment amounts reflect the operator's performance against GSL indicators.

DCMC further commented that the intention of the regulatory regime is to standardise practices and best serve the needs of Territory communities. DCMC stated while it is reasonable the quantum that underlies calculation of GSL payments may be changed to reflect local cost factors, performance indicators should remain standard to ensure service level benchmarks remain meaningful and consistent across the industry.

DCMC expressed that the ability to measure and compare performance within and between networks is an important element of performance measurement and the Exemption should be amended to ensure Schedule 3 indicators are captured. Network reliability indices and indicators of customer performance are not only an important measure of RTA Gove's short term performance but help set a baseline for future performance by its successor.

PWC stated it believes using the same method applied in Schedule 1 would be acceptable. PWC stated it has no issues with RTA Gove utilising the GSL approach.

PWC advised the GSLs had been utilised in Nhulunbuy previously, and PWC considers it is an acceptable standard to apply to the township. PWC noted implementing the GSL Scheme would hold RTA Gove to the same standard as PWC, which is adequate for promoting maintenance and network performance improvements. PWC had no comment on the appropriateness of reporting requirements under the EIP Code; however, it considers several reporting items may be valuable in protecting customers, and it could be of benefit for the Commission to receive reporting on these.

RTA Gove had no objection to the Commission escalating GSL payments for RTA Gove in line with similar sized remote isolated networks. RTA Gove stated it would like to note they are not further incentivised to deliver reliable power by the existence of these payments. RTA Gove stated it is motivated by maintaining and improving external stakeholder relationships, their commitment to the wellbeing and health of their Traditional Owners and to a lesser degree, to the financial disruption caused from electrical outages to their mining operations. RTA Gove stated in the past 12-month reporting period, there have only been three events that have given rise to a GSL payment.

RTA Gove stated the regulatory burden associated with full compliance with GSL related reporting requirements contained in Schedule 3 is typically associated with large scale utilities providers. RTA Gove considered additional reporting requirements placed upon a provider who cannot achieve sufficient scale to defray the costs of compliance, should be avoided wherever practicable unless there were compelling reasons for their introduction.

Commission staff met with stakeholders in Nhulunbuy. The frequency and duration of outages and limited notice of outages, often with poor communication, were the largest concerns raised by the stakeholders. While stakeholders accepted that some unplanned outages were inevitable, the main concerns Commission staff heard related to the duration, timing and limited notice of planned outages. In particular, stakeholders stated that they sometimes are not notified of planned outages, or are given very limited notification, and planned outages can be of a long duration during hot weather.

Commission staff also understand from meetings that the only notification for most customers occurs through the community Facebook page, although the Commission understand that the hospital and some large businesses receive direct notification from RTA Gove, who then take it upon themselves to try and advise all Nhulunbuy residents they come into contact with.

Commission's position and reasons

The Commission is of the view that the application of the GSL Scheme in Nhulunbuy is appropriate for the circumstances and the continued inclusion of the GSL Scheme as part of the Exemption is an important part of recognising service to customers. No alternative methods were identified by stakeholders for varying the GSL performance indicators and payment amounts. The Commission intends to include the GSLs in Schedule 2 of the Exemption, rather than the current approach of publishing a separate document. This should improve accessibility and transparency for Nhulunbuy residents, industry and other stakeholders of the GSL arrangements for Nhulunbuy.

The Commission proposes to vary the Exemption to incorporate RTA Gove's current approved GSL performance indicators, with minor wording changes to make it explicit that planned network interruptions are excluded from the duration and frequency based GSLs (consistent with the original intent and that in the current EIP Code) and provide for escalation of the approved GSL payment amounts using the same method applied to the GSLs in Schedule 1 of the EIP Code, noting the preference for simplicity and consistency across network providers where reasonable.

The Commission proposes to vary the Exemption to make it explicit that RTA Gove must comply with the GSL related reporting requirements in Schedule 3 to the EIP Code, which is also consistent with the original intent and actual practice.

The Commission intends to retain the GSL for the cumulative duration of unplanned network interruptions that requires a GSL payment at more than 40 hours in a financial year consistent with the Commission's approval of this Nhulunbuy-specific GSL in 2020..

The Commission also proposes to remove the GSL for "keeping appointments within 30 minutes of the time agreed with the small customer", consistent with its removal from the EIP Code GSLs.

The Commission considers that the GSL obligations and reporting requirements, together with the ERS Code life support equipment obligations related to the notification of planned outages for life support customers, and the reporting obligations discussed in Chapter 14 below, address the concerns raised by stakeholders regarding planned and unplanned outages and provide similar protections to those in the regulated networks, including Tennant Creek, which is also small and isolated.

Notwithstanding the aim to address concerns, the Commission notes that there are limitations on the extent to which any regulatory requirements can address these matters given the nature and age of the network and the fact that some planned and unplanned outages will be inevitable in any electricity network.

GSLs were paid by RTA Gove in 2021-22 for the frequency of unplanned outages (unplanned network interruptions) and for not providing at least two business days' notice of planned outages, however no GSLs were paid in 2022-23¹⁶. Stakeholders should advise the Commission if they have concerns with the accuracy of RTA Gove's reported performance with their GSLs.

The Commission is understanding of RTA Gove's position and is not seeking to impose additional unnecessary compliance burdens. The Commission's proposed variations formalise reporting of information which RTA Gove has already been providing. Chapter 14 discusses this in more detail, along with broader network performance reporting considerations.

¹⁶ Available at <https://utilicom.nt.gov.au/publications/reports-and-reviews/township-of-nhulunbuy-guaranteed-service-level-performance-report-2022-23> accessed 1 February 2024

8 | Utilities Commission to investigate complaints

Background

Clause 3 of the Exemption provides that RTA Gove is to be treated as an electricity entity for the purposes of sections 48 to 51 of the ER Act, in relation to the Commission investigating complaints. This condition was included in the Exemption following the previous review (completed in August 2020).

The inclusion of this condition in the Exemption addresses a gap whereby the Commission previously did not have jurisdiction to investigate relevant complaints relating to RTA Gove's conduct as it does not hold a licence to participate in the electricity supply industry (by virtue of its exemption document) and therefore is not an electricity entity as defined in the ER Act.

The Commission considers this condition is an appropriate regulatory mechanism to provide for the interests of Nhulunbuy electricity consumers, noting it does not impose additional obligations on RTA Gove but provides an avenue for consumers to pursue legitimate complaints where RTA Gove's conduct is contrary to the conditions of the Exemption or the objects of the ER Act or the UC Act.

The Consultation Paper sought feedback from stakeholders on whether they had any views concerning clause 3 of the Exemption and the Commission's role in investigating complaints about RTA Gove.

Submissions

Responses to the questions in the Consultation Paper were received from DCMC, PWC and RTA Gove.

DCMC's submission was supportive of retaining this condition in the Exemption and did not propose any amendments. DCMC acknowledged the administrative burden this condition places on the Commission, and stated this mechanism appears essential to test the extent to which consumer complaints can and are being addressed within the regulatory framework.

PWC likewise was supportive of retaining this condition as further protection for customers in Nhulunbuy and stated it provides consistency for customers living in the region and connected to remote communities.

RTA Gove's submission stated it is not aware of any need to vary this condition.

Commission's position and reasons

The Commission proposes to retain the condition as it is currently drafted, noting stakeholders were supportive of its retention.

There is no external dispute resolution body in the Territory that can deal with complaints about a privately-owned electricity supplier, retailer or network provider, such as RTA Gove. Where there are disputes about a licensee that is owned by the Territory Government, such as PWC and Jacana, the complainant can seek assistance from Ombudsman NT. This contrasts with other jurisdictions where there are dedicated electricity ombudsmen with legislated remits that extend to dealing with matters between customers and privately-owned electricity entities. The Commission continues to encourage the Territory Government to explore options to strengthen the external dispute resolution framework. This was raised in the Commission's first Northern Territory Electricity Retail Review¹⁷ in 2017-18 and the Commission continues to raise this ombudsman gap.

Relevantly, the Commission's powers to investigate complaints are narrow whereby it can only consider complaints related to a breach of a licence or conduct that is contrary to the objects of the ER Act or UC Act. The Commission is not able to investigate other types of complaints or disputes.

¹⁷ Available at <https://utilicom.nt.gov.au/publications/reports-and-reviews/northern-territory-electricity-retail-review-2017-to-2018>

9 | Approval of the Minister for variation or revocation of the Exemption

Background

Section 87(3) of the ER Act provides that except as otherwise provided in the Exemption, an exemption under subsection (1) may be varied or revoked by the Utilities Commission by notice in writing.

Relevantly, clause 4 of the Exemption provides that, under section 87(3) of the ER Act, the Exemption may be varied or revoked by the Commission by notice in writing, with the approval of the Minister. This condition was included in the original Exemption issued by the Commission in 2005 with the approval of the then Treasurer (as regulatory Minister).

The Consultation Paper asked stakeholders whether there is any need to amend clause 4 of the Exemption, which provides for Ministerial oversight of any variation to the Exemption.

Submissions

Responses to the questions in the Consultation Paper were received from DCMC, PWC and RTA Gove.

DCMC advised the Treasurer, as regulatory Minister, could delegate authority to the Commission, though elements of the negotiation process ultimately remain policy-driven, indicating that it is appropriate for the Northern Territory Government to extend executive oversight to the Exemption.

PWC advised it did not see any urgent need to amend this clause as the condition gives the Minister appropriate powers to manage the Exemption and vary it should the need arise.

RTA Gove stated it is not aware of any need to vary this condition.

Commission's position and reasons

The Commission proposes to retain the condition as it is currently drafted, noting stakeholders were supportive of its retention.

10 | Review period of the Exemption

Background

Clause 5 of the Exemption provides that the Exemption will be reviewed at three year intervals from the date of issuance and continues until the date on which Special Purpose Lease No 214 expires. Special Purpose Lease No 214 is the lease for the township of Nhulunbuy granted under the *Special Purposes Leases Act 1953*.

The Commission considers that a condition requiring regular review of the Exemption is appropriate, noting that this provides an opportunity to ensure the regulatory regime applicable to Nhulunbuy electricity supply remains fit-for-purpose. However, the three year timeframe may be burdensome for the Commission and stakeholders and a longer timeframe with flexibility to undertake it sooner if necessary might reduce this burden.

The Consultation Paper asked stakeholders to consider whether the current condition requiring review of the Exemption at three year intervals is appropriate.

Submissions

Responses to the questions in the Consultation Paper were received from DCMC, PWC and RTA Gove.

DCMC's submission noted RTA Gove intends to relinquish Special Purpose Lease 214 prior to 2030, and perhaps substantially sooner. DCMC suggested it may be worth considering reducing the review period to two years in order to ensure the Commission a further opportunity to normalise regulatory arrangements is secured.

PWC stated it has no issues with the proposed three year approach. PWC's submission discussed the evolving market in Nhulunbuy and proposed the interval could be reduced to balance the administrative burden on the government, stakeholders and RTA Gove. However, PWC is currently comfortable with the proposed three year timeframes.

RTA Gove's submission discussed that with their mining scheduled to cease before the end of the decade they are working with stakeholders on the long-term vision for the management of infrastructure and provision of services to the Nhulunbuy community (and surrounds). RTA Gove anticipate these discussions will become more focussed over the next three-year period and it may be more appropriate for the Commission to be kept informed of any agreed vision regarding service provision. On that basis, RTA Gove suggested a review period of five years would seem more appropriate (to make it consistent with the proximate end of life of the mine) to allow these discussions to continue.

Commission's position and reasons

The Commission proposes to amend the Exemption review period to a maximum of five yearly intervals, noting the Commission can review the Exemption sooner if it is considered necessary.

The Commission considers the regular review of the Exemption is still appropriate to ensure the regulatory regime applicable to Nhulunbuy electricity supply remains fit-for-purpose. With regards to the length of time between reviews, the submissions received presented mixed views – shorten, no change, and lengthen.

The Commission believes that five years is appropriate given the costs and benefits of regular reviews, noting that:

- the Commission has undertaken two recent reviews that have made significant changes to the exemption conditions to bring them more in line with requirements applicable in other networks
- the expectation expressed in submissions that RTA Gove will relinquish its lease within the next five to six years or possibly sooner, and the exemption will expire when the lease is relinquished, means any changes made in a future review may only apply for a very short time (if at all)

- it will be more beneficial to focus efforts on developing suitable arrangements for the regulatory oversight of the network after the end of the lease, and the Commission would be happy to assist DCMC with advice on appropriate regulatory arrangements.

As discussed in other chapters in this Draft Decision, the current Exemption review process is proposing to include additional clauses in the Exemption which will formalise compliance with multiple aspects of the ERS Code and EIP Code. These changes are proposed to introduce additional customer protections and any subsequent changes to the Codes will need to be met by RTA Gove, regardless of the length of time between formal Exemption review processes.

11 | Internal dispute resolution obligations

Background

Under the ERS Code, retailers and network providers have obligations to develop, make and publish procedures for handling customer complaints and disputes, and to comply with these procedures as published. These procedures must be substantially consistent with the Australian Standard AS ISO 10002 2022 (*Customer satisfaction – Guidelines for complaints handling in organisations*) as amended and updated from time to time.

The inclusion of these obligations was a result of the Commission's recent review of the ERS Code, with the Commission's Final Decision¹⁸ and an amended ERS Code¹⁹ published in June 2023. The new internal dispute resolution obligations, at clauses 11.4 (Standard complaints and dispute resolution procedures) and 11.5 (Complaints made to retailer or network provider for internal resolution) of the ERS Code, are generally consistent with that in sections 81 and 82 of the National Electricity Retail Law, with modification for the Territory's circumstances.

The Commission noted in its Final Decision that it had received feedback from stakeholders questioning whether these obligations are intended to apply to exempt retailers and recommending the Commission do all things necessary to achieve consistency across the Territory and to prevent the undesirable outcome of disparities in the available protections and dispute resolution pathways available to customers based on their service provider and place of residence.

The Commission noted stakeholders were correct that amendments to exemption documents would be required for the new dispute resolution obligations in the ERS Code to apply, and the Commission would consider this issue as part of its next review of RTA Gove's Exemption.

The Commission considers the interests of Territory electricity consumers are served by ensuring consistent (to the extent that is reasonable) consumer protections are available to all electricity supply customers, regardless of the location at which they reside. However, the Commission acknowledges there may be costs to RTA Gove associated with providing these protections and to the Commission for regulating compliance.

The Consultation Paper asked stakeholders to consider whether the benefits of amending the Exemption to require RTA Gove to comply with clauses 11.4 and 11.5 of the ERS Code, in relation to internal dispute resolution obligations, outweigh any associated costs.

Submissions

Responses to the questions in the Consultation Paper were received from DCMC, PWC and RTA Gove.

DCMC and PWC supported amending the Exemption. DCMC considers the new dispute resolution measures support the inclusion of conditions that introduce obligations requiring the publication of procedures for handling customer complaints, which will promote consistency of service across the industry. PWC notes it will provide customers in Nhulunbuy with clear pathways to resolve grievances where they occur and this makes the process more consistent for customers.

RTA Gove did not support the amendment stating there is no merit in developing a particular complaint handling process which differs from arrangements already in place. RTA Gove discussed they are a small, isolated network with a small customer base (a significant portion of which are employees) and limited support staff. RTA Gove referred to its previous feedback to the Commission stating the number of complaints received per annum is small (averaging around five per year in the last three years) was evidence of not needing to develop a process that differed from what is already in place.

¹⁸ Available at <https://utilicom.nt.gov.au/publications/approvals-decisions-and-determinations/final-decision-electricity-retail-supply-code-review>

¹⁹ Available at <https://utilicom.nt.gov.au/publications/codes-and-guidelines/electricity-retail-supply-code3>

Commission's position and reasons

The Commission proposes to amend the Exemption to require RTA Gove to comply with clauses 11.4 and 11.5 of the ERS Code, in relation to customer complaints, noting the ERS Code is not overly prescriptive and RTA Gove's existing processes may meet the requirements of the ERS Code, or may do so with minimal changes. The Commission also proposes an associated three-month transitional provision for RTA Gove to develop, make and publish its required standard complaints and dispute resolution procedures and make any necessary updates to its website.

The introduction of clauses 11.4 (Standard complaints and dispute resolution procedures) and 11.5 (Complaints made to retailer or network provider for internal resolution) into the ERS Code were to increase customer protection mechanisms, and the visibility of those protection mechanisms by requiring information to be published on websites. The proposed variation ensures those protections are available to RTA Gove's electricity supply customers in Nhulunbuy.

12 | Hardship policy obligations

Background

The ERS Code provides obligations for electricity retailers to develop a hardship policy (in respect of the retailer's residential customers), submit the hardship policy to the Commission for approval, publish the policy as approved by the Commission on the retailer's website, and maintain, implement and comply with the policy. The ERS Code also includes minimum requirements that a retailer's hardship policy must contain.

The inclusion of these obligations in the ERS Code was a result of the Commission's recent review of the ERS Code. Relevantly, the Commission's ERS Code Issues Paper²⁰ noted that (prior to the introduction of these obligations in the ERS Code) all jurisdictions except the Territory have retailer obligations in relation to customer hardship, and stakeholder submissions to the review were consistent at a high level that the ERS Code should be amended to require retailers to have an approved hardship policy for small customers.

The Commission noted in its Final Decision it had received feedback from stakeholders suggesting it was unclear whether the hardship policy obligations in the ERS Code were intended to apply to RTA Gove in Nhulunbuy and advised it would consider this issue as part of its next review of the Exemption.

The Commission considers the interests of Territory electricity consumers are served by ensuring consistent (to the extent that is reasonable) consumer protections are available to all electricity customers, regardless of the location at which they reside. However, the Commission acknowledges there may be costs to RTA Gove associated with providing these protections and to the Commission for regulating compliance.

The Consultation Paper asked stakeholders to consider whether the benefits of amending the Exemption to require RTA Gove to comply with clause 12 of the ERS Code, in relation to customer hardship policy obligations, outweigh any associated costs.

Submissions

Responses to the questions in the Consultation Paper were received from DCMC, PWC and RTA Gove.

DCMC was supportive of the introduction of clause 12 of the ERS Code and noted its introduction reflects an emerging national standard that reflects community expectations with respect to the social responsibilities of electricity retailers. DCMC stated it recognises that a facility to enter a hardship payment plan is an important mechanism for the protection of consumers who are financially vulnerable and face challenges that affect their ability to plan for and pay electricity bills. The availability of support in such situations is important to ensuring energy security within the community and supporting the wellbeing of individuals and families.

PWC were also supportive of this amendment as they stated it will provide customers in Nhulunbuy with additional protections where they may face hardships. PWC was of the view that because RTA Gove bills individual customers, it is prudent for the entity to have appropriate policies and procedures in place to manage and protect customers facing hardships.

RTA Gove stated it is not clear what benefits would flow from imposing additional obligations in the licence relating to customer hardship, as a significant amount of the customer base does not pay for electricity consumed. RTA Gove advised it had not disconnected any customers for non-payment in the past three year reporting period.

²⁰ Available at <https://utilicom.nt.gov.au/publications/approvals-decisions-and-determinations/issues-paper-electricity-retail-supply-code-review>

Commission's position and reasons

The Commission proposes to amend the Exemption to require RTA Gove to comply with clause 12 of the ERS Code, in relation to customer hardship. The Commission also proposes an associated transitional provision whereby RTA Gove must submit its proposed customer hardship policy to the Commission for approval within three months of commencement of the revised Exemption.

The intent and purpose of the introduction of the hardship provisions into the ERS Code was to provide clarity and visibility for customers that hardship support and assistance is available. The Commission notes the circumstances of Nhulunbuy are unique where many customers do not pay for electricity consumed, however, customer protections should still be available to customers that do pay.

The Commission understands payment plans have been offered to customers, however, RTA Gove's policy is not obvious to customers. There was nothing on Nhulunbuy Corporation's (who act as retailer for RTA Gove) website regarding payment plans, hardship, or customer assistance when this Draft Decision was prepared.

The Commission notes that RTA Gove (and Nhulunbuy Corporation) do not have any prepayment meter customers. Given this, the Commission does not propose to amend the Exemption to require RTA Gove to comply with clause 13 of the ERS Code, which requires a hardship policy for a retailer's prepayment meter customers. Should prepayment meters be offered in the future, the Commission would seek to amend the Exemption to require RTA Gove's compliance with clause 13 of the ERS Code.

13 | Family violence policy obligations

Background

The ERS Code provides obligations for electricity retailers to develop a family violence policy in respect of its residential customers, submit the family violence policy to the Commission for approval, publish the approved policy on the retailer's website, and maintain, implement and comply with the policy. The ERS Code also includes minimum requirements that a retailer's family violence policy must contain. The inclusion of these obligations in the ERS Code was a result of the Commission's recent review of the ERS Code.

In considering whether there is a need for a family violence policy in the Territory, the Commission undertook research and analysis to assist it in determining its decision to amend the ERS Code, including of Australian Bureau of Statistics data on the annual victimisation rate for recorded family and domestic violence related assault for all jurisdictions (excluding Queensland and Victoria). Relevantly, in 2022, the Territory had the highest victimisation rate (2,711 per 100 000 people), and was well above Western Australia, which had the second highest victimisation rate (893 per 100 000 people)²¹, noting this rate refers to family and domestic violence related assault only and does not take into account sexual assault and homicide.

The Commission noted in its Final Decision that stakeholders sought clarification on whether the family violence obligations in the ERS Code will apply to RTA Gove in relation to Nhulunbuy and advised it would consider this issue as part of its next review of the Exemption.

The Commission considers that consistent protections (to the extent that is reasonable) should be available to all Territory electricity customers, regardless of the location at which they reside. However, the Commission acknowledges there may be costs to RTA Gove associated with providing these protections and to the Commission for regulating compliance.

The Consultation Paper asked stakeholders to consider whether the benefits of amending the Exemption to require RTA Gove to comply with clause 14 of the ERS Code, in relation to family violence policy obligations, outweigh any associated costs.

Submissions

Responses to the questions in the Consultation Paper were received from DCMC, PWC and RTA Gove.

DCMC's submission was supportive of the introduction of family violence policy obligations and stated the introduction of the obligations reflects and responds to evidence the Territory has the highest level of victimisation in the country. DCMC reflected that an absence of data specifically relating to Gove/Nhulunbuy is not considered to be problematic as the nature of abuse is understood to be pervasive throughout the Territory and efforts should be made to accommodate and support victims, regardless of scale.

PWC were also supportive of the proposed amendment, stating it will provide customers in Nhulunbuy with additional protection and support in situations of domestic and family violence.

RTA Gove stated they were open to discussing how protections relating to family violence matters could be appropriately incorporated into customer policies for networks such as theirs.

The Commission was advised by RTA Gove that Nhulunbuy Corporation's *Debt Recovery Policy* is currently under review and it is anticipated this will incorporate a process for managing electricity customers experiencing family violence.

²¹ Refer <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/latest-release>, accessed 1 February 2024

Commission's position and reasons

The Commission proposes to amend the Exemption to require RTA Gove to comply with clause 14 of the ERS Code, in relation to a family violence policy. The Commission also proposes an associated transitional provision whereby RTA Gove must submit its proposed family violence policy to the Commission for approval within three months of commencement of the revised Exemption.

The purpose of the introduction of these provisions into the ERS Code is another customer support and protection mechanism, this time to specifically identify, engage with and assist residential electricity customers affected by family violence.

The Commission noted all submissions received were supportive of the introduction of family violence customer provisions, and RTA Gove has already been proactively reviewing its policies to address family violence.

14 | Network performance reporting

Background

Clause 5.1.2 of the EIP Code requires that network entities must, by no later than 31 October, submit to the Commission a report on their actual performance against the performance indicators provided in Schedules 1 (Guaranteed Service Level Scheme) and 3 (Network Services Performance Indicators) of the EIP Code, for the previous financial year. This includes the GSLs in Schedule 1 Table 1, unadjusted and adjusted System Average Incident Duration Index (SAIDI) and System Average Incident Frequency Index (SAIFI), poorly performing feeders, phone answering and network complaints.

As discussed earlier in this paper, the current terms and conditions of the Exemption includes (at clause 2(iv) of the exemption document) a requirement to comply with the GSL Scheme, including performance reporting against the GSL Scheme, with the GSLs in Schedule 1 Table 1 replaced by those GSLs approved by the Commission in accordance with clause 2(iii) of the exemption document. The Commission has subsequently published two Township of Nhulunbuy Guaranteed Service Level Performance Reports²² to date.

The Commission is of the view that publishing annual reports based on RTA Gove's performance reporting provides valuable insight to consumers and is an effective means of holding RTA Gove accountable for the network performance in Nhulunbuy. However, the Commission notes the performance reporting requirements imposed on RTA Gove are limited compared to the obligations of electricity entities licenced under the ER Act and operating on an access-regulated network.

While RTA Gove is not required to comply with network performance reporting requirements under the EIP Code, it has voluntarily reported unadjusted and adjusted SAIDI and SAIFI for the Nhulunbuy electricity network to the Commission. The Commission finds this information useful for comparison with similar small systems, such as the Tennant Creek power system, but does not publish the information. However, if the Exemption were varied to include a requirement to report against the network service performance indicators, the Commission would be required to publish an associated assessment in accordance with clause 5.5.1 of the EIP Code. Relevantly, the Commission publishes an assessment of network performance in the access-regulated networks in its annual Northern Territory Power System Performance Review.²³

The Commission considers public reporting of performance is an effective means of holding regulated entities accountable for their performance and incentivises maintaining and improving performance. This may be particularly relevant for the network performance in Nhulunbuy, noting the Commission has been made aware of anecdotal concerns about the reliability and quality of supply in Nhulunbuy. However, the Commission acknowledges the imposition of additional network reporting requirements may entail additional costs to RTA Gove.

The Consultation Paper asked stakeholders to consider whether the benefits of amending the Exemption to require RTA Gove to comply with network performance reporting obligations in the EIP Code outweigh any associated costs.

Submissions

Reponses to the questions in the Consultation Paper were received from DCMC, PWC and RTA Gove.

DCMC stated while it supports the continued provision of this data under this voluntary arrangement, it also supports the Commission's consideration of potential benefits in mandating data provision under a prescribed method that allows annual reporting. DCMC cited benefits including improved accountability through the benchmarking of performance, an ability to compare similarly sized operators, and the establishment of a data that enables performance monitoring over time.

²² Available at <https://utilicom.nt.gov.au/electricity/reporting/township-of-nhulunbuy-guaranteed-service-level-performance-report>

²³ Available at <https://utilicom.nt.gov.au/electricity/reporting/power-system-performance-review>

PWC stated it has no comment on this question, but support the Commission's decisions where they enhance local outcomes.

RTA Gove's submission was clear that RTA Gove does not consider a requirement to comply with network performance reporting obligations in the EIP Code outweigh the associated costs and benefit to consumers. RTA Gove stated the cost and complexity of delivering power in remote North East Arnhem land is such that care must be given in suggesting to customers it is possible for any provider (including government) to provide the same reliability and consistency which might be experienced in Darwin or other major network provider, and to a degree which exceeds that which would be applied through any reasonable cost-benefit consideration.

Commission's position and reasons

The Commission is proposing to amend the Exemption to require RTA Gove to report adjusted and unadjusted SAIDI and SAIFI, but no other network performance reporting (other than GSL related, discussed in Chapter 7) in accordance with clause 5 (Reporting) and Schedule 3 of the EIP Code and, as they relate to adjusted and unadjusted SAIDI and SAIFI performance indicators, clauses 6.1.1 (Data Quality, excluding audit requirements at 6.2 and 6.3) and 7 (Data Segmentation) of the EIP Code.

RTA Gove has been voluntarily reporting adjusted and unadjusted SAIDI and SAIFI for the Nhulunbuy electricity network to the Commission annually. The proposed amendment formalises this, with no additional work being required of RTA Gove. The proposed change to the Exemption will, however, ensure the data is reported and require the Commission to publish an assessment of the reported performance in accordance with clause 5.5.1 of the EIP Code.

15 | Retail performance reporting

Background

Clause 5.1.1 of the EIP Code requires that retail entities must, by no later than 31 August, submit to the Commission a report on their actual performance against the performance indicators, provided at Schedule 4 (Retail Services Performance Indicators) to the EIP Code, for the previous financial year. This includes performance indicators relating to customer service and complaints, handling customers experiencing payment difficulties, prepayment meters, disconnection and reconnection, and customer hardship.

While RTA Gove undertakes retail operations in Nhulunbuy, this reporting requirement does not apply to RTA Gove as it is not licensed as an electricity retailer and because the EIP Code applies explicitly to the access-regulated electricity networks in Darwin-Katherine, Alice Springs and Tennant Creek. As part of the 2023 review, the Commission is considering whether there is benefit to imposing reporting obligations on RTA Gove in relation to its electricity retail operations in Nhulunbuy.

The Commission publishes an assessment of retail performance in the access-regulated networks in its annual Northern Territory Electricity Retail Review.²⁴ The Commission considers that public reporting of retail performance is an effective means of holding retailers accountable for their performance and incentivises maintaining and improving performance. If the Exemption were varied to include an obligation to comply with retail performance requirements in the EIP Code, the Commission would be required to publish an assessment of the report in accordance with clause 5.5.1 of the EIP Code.

The Consultation Paper asked stakeholders to consider whether the benefits of amending the Exemption to require RTA Gove to comply with retail performance reporting obligations in the EIP Code outweigh any associated costs.

Submissions

Responses to the questions in the Consultation Paper were received from DCMC, PWC and RTA Gove.

DCMC's submission, as discussed in Chapter 14, was supportive of retaining the voluntary arrangement, but also spoke to the benefits of formalising reporting arrangements. DCMC noted the impending transfer of ownership in network and retail operations and that time series data is likely to be particularly useful in assessing the management of services across this impending transition.

PWC stated it has no comment on this question, but support the Commission's decisions where they enhance local outcomes.

RTA Gove's submission was not supportive. RTA Gove stated Nhulunbuy Corporation Limited acts as the electricity account manager on behalf of RTA Gove and does not have sufficient scale to operate a call centre or associated technologies which are specifically designed to generate the data contained within the Northern Territory Electricity Retail Review. Requiring compliance would introduce both cost and complexity, requiring dedicated phone lines, employees, systems and processes to be developed. RTA Gove are uncertain how this could be commissioned in any reasonable timeframe, noting the cessation of mining activities at the end of the decade. RTA Gove stated it is not feasible for them to comply with the retail performance reporting obligations in the EIP code.

Commission's position and reasons

The Commission is not proposing any changes to incorporate retail performance reporting obligations in the Exemption.

While the Commission considers there may be benefits to imposing retail performance reporting obligations on RTA Gove, the Commission notes the benefits would likely be outweighed by the costs to RTA Gove. Further, this would not be consistent with obligations imposed on retail licensees

²⁴ Available at <https://utilicom.nt.gov.au/electricity/reporting/electricity-retail-review>

operating outside the access-regulated networks, who are not subject to retail performance reporting under the EIP Code. For example, PWC is not required to provide a retail performance report in respect of its electricity retail operations in Jabiru.

There was nothing in the submissions received, or discussions with stakeholders in Nhulunbuy that presented a strong argument for the inclusion of retail performance reporting obligations.

16 | Safety Management and Mitigation Plan

Background

The *Electrical Safety Act 2022* (ES Act) provides that an electricity entity²⁵ must not generate electricity or operate an electricity network unless it prepares a Safety Management and Mitigation Plan (SMMP) for the entity and the SMMP is approved by the Electrical Safety Regulator (NT Worksafe). While the SMMP provisions in the ES Act have yet to commence, these provisions are expected to commence by 1 July 2024 and the Commission is aware that NT Worksafe is taking steps to ensure that electricity entities are informed of SMMP requirements under the ES Act.

A SMMP is defined in the ES Act as a written document that sets out:

- the hazards and risks associated with:
 - the design and construction of the electricity infrastructure of the electricity entity before its operation; and
 - the operation and maintenance of the electricity infrastructure
- how the electricity entity will manage the hazards and risks to ensure that its electrical safety obligations are properly discharged
- what the electricity entity will do to ensure that contractors performing electrical and other work for the entity comply with the requirements of the SMMP
- any other matters prescribed by regulation.

Although the SMMP provisions in the ES Act have yet to commence, relevant electricity entities have SMMP obligations, which are imposed by licence condition.

Generation and network licensees are required by licence condition²⁶ to:

- within 3 months of the date of issue of the licence:
 - prepare a SMMP, which must be consistent with and reflect good electricity industry practice in relation to the safety management of the electricity infrastructure owned or operated by the licensee under this licence; and
 - submit the initial plan to the Utilities Commission for approval;
- annually review and, if necessary, update the plan to ensure that it is consistent with and reflects good electricity industry practice
- comply with the plan as approved in accordance with this clause
- not amend the plan without the approval of the Commission or the regulator specified on the *Electricity Reform Act 2000* and the Electricity Reform (Safety and Technical) Regulations as having the authority to approve the licensee's SMMP from time to time.

As the SMMP licence conditions will be superseded by obligations under the ES Act, the Commission intends to remove SMMP conditions from network and generation licences at the relevant time.

As discussed earlier in this consultation paper, RTA Gove does not hold a licence to participate in the electricity supply industry under Part 3 of the ER Act and is therefore not an electricity entity for the purposes of the ER Act or the ES Act. This means it is not required to prepare a SMMP under the ES Act (when the relevant provisions commence). Similarly, the Exemption does not include a

²⁵ Section 4(1) of the *Electricity Reform Act 2000* defines an electricity entity as a person licensed under Part 3 to carry on operations in the electricity supply industry and includes (where the context requires) a person who has been licensed to carry on operations in the electricity supply industry under that Part whose licence has been suspended or cancelled or expired.

²⁶ For example, see clause 21 of Assure Energy Asset Pty Limited's generation licence available at <https://utilicom.nt.gov.au/publications/licences-on-issue/licence-generation-assure-energy-asset-pty-ltd>

condition for RTA Gove to prepare a SMMP consistent with that currently required of generation and network licensees.

The Commission is considering whether there is a need to vary the Exemption to include a requirement for RTA Gove to prepare and comply with a SMMP, given the importance of ensuring the safety of the public, employees and contractors around electrical infrastructure. The Commission notes while this would bring RTA Gove in line with obligations currently imposed on electricity entities operating in the Territory, it would likely entail additional costs to RTA Gove.

The Commission notes RTA Gove's advice that it operates according to the Rio Tinto Group Standard for Electrical Safety.²⁷

The Consultation Paper asked stakeholders to consider whether the benefits of amending the Exemption to require RTA Gove to comply with SMMP obligations is appropriate for the circumstances of RTA Gove's electricity network and generation in Nhulunbuy and if it would outweigh any associated costs.

Submissions

Responses to the questions in the Consultation Paper were received from NT WorkSafe, PWC and RTA Gove.

NT WorkSafe strongly supports the inclusion of SMMP provisions in the Exemption. The submission details the changes coming into effect from 1 July 2024 with the introduction of the ES Act, which includes provisions that strengthen SMMP requirements including consultation with employee representatives and contractors, assessment by an independent third party every three years, and a suite of penalties to address the failure to comply with SMMP provisions. NT WorkSafe stated there does not appear to be persuasive reasons for RTA Gove's current practical exemption from SMMP requirements to continue.

NT WorkSafe supports the variation of the Exemption to include a requirement to comply with SMMP provisions to ensure RTA Gove's obligations are consistent with electrical entities operating elsewhere in the Territory. NT WorkSafe proposed possible wording of a condition could include the following:

RTA Gove is to be treated as an electricity entity for the purposes of Part 4 Division 2 (or section 77 to section 82 (inclusive)) of the Electricity Safety Act 2022.

The Commission undertook further consultation with NT WorkSafe representatives to discuss NT WorkSafe's submission in more detail.

PWC's submission noted PWC was not concerned about RTA Gove maintaining an exemption to the requirements.

RTA Gove stated it does not believe there is sufficient benefit in obliging it to comply with SMMP requirements, given equivalent standards and procedures already exist. RTA Gove apply Rio Tinto Group Standard for Electrical Safety which governs practices in other operations which provide retail electricity services, including elsewhere in Australia. RTA Gove stressed the importance of ensuring the safety of the public, employees and contractors around electrical infrastructure, however believe that existing Rio Tinto standards employed by RTA Gove, enable it to meet this obligation. In reviewing Territory Generation's Safety Management & Mitigation Plan, RTA Gove stated it is confident the obligations within it are matched by its own existing standards and associated procedures.

Commission's position and reasons

The Commission, considering the need to balance regulatory oversight, existing legislated work health and safety obligations, RTA Gove's own procedures and NT WorkSafe's views, is proposing to include conditions within the Exemption similar to those which currently exist in licenced entities' licences. This would see a requirement for RTA Gove to prepare a SMMP in consultation with NT WorkSafe

²⁷ Available at <https://www.riotinto.com/-/media/Content/Documents/Sustainability/Corporate-policies/RT-Electrical-safety-standard.pdf>

and other relevant stakeholders, submit it for approval by the Commission, regularly review the plan, comply with the plan, and not amend it without approval.

Although not the safety regulator, the Commission takes safety seriously and is supportive of the intent of NT WorkSafe's submission. However, the Commission does not believe it has the power nor ability to require compliance with legislation (including the ES Act), other than the *Electricity Reform Act 2000*, through a licence (or exemption) condition. As such, it is not able to implement NT WorkSafe's recommended wording.

The Commission notes the intent of NT WorkSafe's submission is to convey that RTA Gove, which is exempt from holding a generation and network licence, should have similar SMMP obligations as generation and network licensees, which will be covered in the ES Act. The current Exemption prevents RTA Gove from being captured by the provisions of the incoming ES Act by exempting it from the requirement to hold a licence. Whilst the proposed variation to the Exemption would not bring into effect the full changes of the ES Act that will apply to licensees, the Commission believes this is a good forward step given its limited powers in relation to safety matters.

Noting the current gap in the ES Act in relation to holders of a licence exemption, the Commission would support amendments to extend the application of the SMMP provisions in the ES Act so that they apply to holders of a licence exemption. If this was to occur, the Commission would remove the proposed SMMP exemption condition.



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