
**REVIEW OF OPTIONS FOR THE
DEVELOPMENT OF A RETAIL PRICE
MONITORING REGIME FOR
CONTESTABLE ELECTRICITY
CUSTOMERS**

DRAFT REPORT

June 2010



Level 9, 38 Cavenagh Street DARWIN NT 0800
Postal Address GPO Box 915 DARWIN NT 0801
Email: utilities.commission@nt.gov.au
Website: www.utilicom.nt.gov.au

Table of Contents

Overview.....	1
Introduction	1
Proposed retail price monitoring regime	1
<i>Disclosure of a wholesale electricity reference price</i>	<i>1</i>
<i>Monitoring of market behaviour and pricing outcomes</i>	<i>2</i>
<i>Customer complaint mechanism</i>	<i>3</i>
<i>Implementation</i>	<i>3</i>
Introduction.....	4
Background.....	4
Developing an electricity retail price monitoring regime	5
<i>Summary of terms of reference</i>	<i>6</i>
Overview of Issues Paper and submissions	6
Summary of submissions	7
<i>Energy Users Association of Australia.....</i>	<i>7</i>
<i>Northern Territory Major Energy Users.....</i>	<i>7</i>
<i>Power and Water Corporation</i>	<i>8</i>
Purpose of this paper.....	8
<i>Timetable for review</i>	<i>8</i>
Objectives of price monitoring.....	9
Price monitoring arrangements.....	9
The case for price monitoring in the Territory	10
<i>Views in submissions</i>	<i>10</i>
<i>Objectives of price monitoring in the Territory</i>	<i>11</i>
Proposed price monitoring arrangements	13
Key design features	13
Proposed information disclosure arrangements.....	14
<i>Disclosure of a wholesale electricity reference price</i>	<i>15</i>
<i>Disclosure of non-price information</i>	<i>17</i>
Monitoring market behaviour and pricing outcomes.....	19
<i>Options for assessing costs and prices.....</i>	<i>19</i>
<i>Views in submissions</i>	<i>22</i>
<i>Commission's draft decision.....</i>	<i>23</i>
Customer complaint mechanism.....	24

<i>Experience to date with the customer complaint mechanism</i>	25
<i>Contestable pricing guidelines</i>	25
<i>Views in submissions</i>	26
<i>Commission's draft decision</i>	26
Implementation considerations	28
Implementation of proposals	28
Legislative head of power	28
Confidential and commercial information	28
Data quality provided to the Commission.....	29

Confidentiality

The Commission will make submissions publicly available. A person not wanting their submission to be public must clearly specify that the document (or any part of the document) should be kept confidential. A version of the submission suitable for publication (i.e. with any confidential material removed) should be provided.

Public access to submissions

Subject to the above, submissions will be made available for public inspection at the office of the Commission and on its website (www.utilicom.nt.gov.au).

To facilitate publication on the Commission's website, submissions should be made electronically by disk or email. However, if this is not possible, submissions can be made in writing.

Inquiries

Any questions regarding this report should be directed in the first instance to the Executive Officer, Utilities Commission at any of the following:

Utilities Commission
GPO Box 915
DARWIN NT 0801

Telephone: 08 8999 5480

Fax: 08 8999 6262

Email: utilities.commission@nt.gov.au

CHAPTER 1

Overview

Introduction

- 1.1 The Commission is required to review and report on options for the development of an effective electricity retail price monitoring framework, and the associated reporting and disclosure arrangements. The purpose of the review is to recommend options for a framework to increase transparency in retail electricity pricing, and ensure that retail prices reflect the cost of supply.

Proposed retail price monitoring regime

- 1.2 The Commission considers that a retail price monitoring regime is necessary in the Territory, to enhance information disclosure to facilitate informed investment and consumption decisions, and to give customers confidence that the terms and conditions of supply offered by the Power and Water Corporation (PWC) are reasonable.
- 1.3 The Commission notes that there is no competition in the Territory's electricity market, and that the market rules and regulatory framework have not been able to support the development of competition, or give customers confidence about pricing and performance outcomes. As such, price monitoring in the Territory is a necessary response to the monopoly position (at this time) of PWC.
- 1.4 The Commission considers that the objective of a retail price monitoring regime in the Territory is to support the effective operation of the electricity market by:
- giving customers and industry participants the key information necessary to make informed investment and consumption decisions;
 - giving customers the key information necessary for them to be confident that the terms and conditions of supply (price/service performance) offered by PWC Retail are reasonable; and
 - establishing adequate incentives for PWC to strive to maintain and improve service performance, and to keep costs and prices to a minimum, while there is no effective competition in the generation or retail market sectors.
- 1.5 The Commission expects the price monitoring arrangements to establish reliable and consistent data on pricing outcomes. This data should assist large customers to assess whether the contract prices offered by PWC are reasonable, and reflect the cost of supply. Further, the data will provide the Commission with a baseline for monitoring of PWC's revenues, prices, costs and performance, against relevant targets.

Disclosure of a wholesale electricity reference price

- 1.6 The Commission considers that customers assessing the terms and conditions of supply offered by a retailer require price and performance information.

-
- 1.7 To provide customers and market observers with key pricing information, the Commission recommends the disclosure of a wholesale electricity reference price, involving publication of the wholesale reference price (and associated energy sent out), at the generation facility gate, for defined intervals after a reasonable period.
- 1.8 The Commission expects that the wholesale reference prices will reflect the generation component of the average customer price, so that customers have relevant information with which to measure wholesale price movements over time and estimate future price movements. The Commission considers that this proposal should be implemented so as to be consistent with moving towards alignment with national electricity market (NEM) arrangements.
- 1.9 The Commission considers that disclosure of a wholesale reference price in the Territory would increase transparency and accountability of pricing outcomes, by:
- providing customers with consistent, auditable and public information on movements in wholesale prices;
 - signaling potential generation investment opportunities to market entrants and market observers;
 - providing large customers with a point of reference on wholesale prices for comparison with terms and conditions offered by PWC in negotiations; and
 - supporting monitoring of potential misuse of market power.
- 1.10 The Commission notes that delays in completing contract negotiations between PWC and customers could represent poor customer service. The Commission will consider if monitoring of the negotiation process is warranted as part of the Review of Electricity Standards of Service.
- 1.11 Furthermore, the type and detail of the system performance and forward planning information reported through the annual Power System Review and the Electricity Standards of Code are being reviewed as part the Commission's work program.

Monitoring of market behaviour and pricing outcomes

- 1.12 The Commission considers that PWC has an effective monopoly in the supply of electricity generation and retail services in the Territory, and the ability to exercise market power in the Territory electricity market. Further, the Commission considers that the potential for market entry and the development of effective competition is not great, at least in the next few years.
- 1.13 The Commission recommends the introduction of arrangements to monitor PWC's market behaviour and pricing outcomes, until there is effective competition in the Territory electricity market, involving:
- periodic detailed investigation of PWC's costs, prices and revenues disaggregated by customer class (at each point of the electricity supply chain) to ensure that customer charges are cost reflective, and that the costs involved represent no more than the reasonable long run cost of supplying electricity; and
 - regular reporting of PWC's pricing outcomes, based on the previous generation price oversight methodology and, possibly, the use of price indices and benchmarks.

Customer complaint mechanism

- 1.14 The Commission considers there is a need for a mechanism to trigger an investigation of PWC's behaviour or pricing outcomes to provide customers with an additional safety net.
- 1.15 The Commission recommends that the existing customer complaint mechanism established by the *Electricity Reform Act* be amended to:
- better define what constitutes 'contrary conduct';
 - give the Commission greater flexibility and discretion about initiating an investigation of a complaint;
 - widen the scope of matters the Commission could investigate;
 - reduce the formality of the investigation process;
 - make public the outcome of the investigation to provide additional transparency about the operation of the market, subject to relevant confidentiality restrictions; and
 - provide the Commission with greater flexibility and discretion to remedy a matter.
- 1.16 The Commission will also consider introducing customer pricing guidelines.

Implementation

- 1.17 The terms of reference ask the Commission to provide detailed plans for the implementation of any recommendations. The implementation considerations and plans will be discussed in more detail once the Commission has finalised the recommendations for the Final Report.

CHAPTER 2

Introduction

Background

- 2.1 The electricity supply industry in the Northern Territory is regulated by the *Electricity Reform Act*, *Electricity Networks (Third Party Access) Act*, *Utilities Commission Act* and associated legislation. This statutory framework was introduced on 1 April 2000.
- 2.2 The statutory framework is primarily focused on regulating the activities of electricity industry participants and customers in the Darwin Katherine, Alice Springs and Tennant Creek power systems – referred to as the market systems. Key elements of the statutory framework are:
- third party access to the Darwin Katherine, Alice Springs and Tennant Creek electricity networks;
 - staged introduction of retail contestability, with all customers becoming contestable from 1 April 2010; and
 - an independent economic regulator, the Utilities Commission, to regulate monopoly electricity services, licence market participants and enforce regulatory standards for market conduct and service performance.
- 2.3 The Power and Water Corporation (PWC) is the main participant in the market systems, generating the majority of electricity, operating the network and supplying retail services to all customers. PWC also provides water supply and sewerage services to customers throughout the Territory.
- 2.4 PWC is a vertically integrated electricity service provider, with generation, network and retail business units operating as separate businesses.¹ The commercial relationship and transactions between each unit is subject to oversight and regulation by the Commission.² PWC is owned by the Territory Government, and is also subject to oversight by a shareholding Minister through the *Government Owned Corporations Act*.
- 2.5 In the three market systems, PWC is currently the sole electricity retailer, supplying electricity to 74 365 customers at 30 June 2009.³ PWC is also the main electricity generator, with almost 91 per cent of generation capacity. There are four other firms generating electricity for the Darwin-Katherine and Alice Springs systems. However, these businesses generate electricity under contract for PWC rather than selling

¹ This paper refers to the separate business units as PWC Retail, PWC Networks and PWC Generation.

² Regulatory instruments include the licensing framework and the Northern Territory Electricity Ring-Fencing Code.

³ Power and Water Corporation, September 2009, 2008-09 Annual Report, page 23.

directly to an electricity retailer, and PWC provides the fuel used for electricity generation.⁴

- 2.6 PWC operates the Darwin-Katherine, Alice Springs and Tennant Creek networks, and is responsible for system control.⁵ The networks are not interconnected, and are separated by long distances. The networks comprise 730 kilometres (km) of high voltage transmission lines and 7378 km of low voltage distribution lines.⁶
- 2.7 Electricity supply in regional and remote centres of the Territory is mainly managed by the Territory Government and a service provider through a contract for service model. These systems include the 72 communities and about 600 outstations where essential services are provided through the Territory Government Indigenous Essential Services program; three mining townships (i.e. Nhulunbuy, Alyangula and Jabiru), where electricity is supplied by the associated mining firm; and eight remote townships (e.g. Elliott, Yulara and Ti-Tree).

Developing an electricity retail price monitoring regime

- 2.8 The Commission is required to review and report on options for the development of an effective electricity retail price monitoring framework, and the associated reporting and disclosure arrangements. The purpose of the review is to recommend options for a framework to increase transparency in retail electricity pricing, and ensure that retail prices reflect the cost of supply.
- 2.9 Price monitoring in Australia is generally used to address public concerns about pricing outcomes by requiring a firm in a market with monopoly characteristics to provide, at a minimum, price data at regular intervals. Specific cost and profit data may also be required. Market performance may be monitored for a defined period of time, to allay public concerns about misuse of market power, or to determine if more intrusive regulation, such as regulation of maximum prices, may be warranted.
- 2.10 However, ongoing concerns about misuse of market power are managed through the national access regime or industry specific legislation.⁷ For markets with ongoing monopoly characteristics (e.g. the electricity industry), price monitoring regulation may become a permanent feature of the market rules.
- 2.11 The market frameworks for the national electricity market (NEM), Western Australia and the Territory are established through industry specific legislation, and include information disclosure and monitoring arrangements to measure price and service performance outcomes. A key aspect of electricity market arrangements is oversight of firms by an independent regulator, such as the Commission.

⁴ These generators are located at Pine Creek (between Darwin and Katherine), Shoal Bay (at the Darwin City Council dump) and Brewer Estate (in Alice Springs).

⁵ The System Controller is located in the PWC networks business unit, and is responsible for monitoring and controlling the operation of the power system to ensure the system operates reliably, safely and securely in accordance with the System Control Technical Code.

⁶ Power and Water Corporation, September 2009, 2008-09 Annual Report, page 23.

⁷ Productivity Commission, August 2001, Review of the Prices Surveillance Act 1983: Inquiry Report, Report No 14, page 49.

- 2.12 The level of scrutiny of price/performance outcomes is determined by the level of competition in the market sector. For example, electricity networks are natural monopoly businesses, and subject to regulation of revenue, price and service performance. In contrast, generators and retailers are generally subject to less intrusive regulation of price/performance, because the prospect for competition is greater.
- 2.13 Customers not satisfied with the electricity price/performance bundle offered by a retailer, have the information to determine if there is a better offer available, and are able to move to another retailer. Competitive disciplines encourage retailers and generators to strive to maintain and improve service performance, and keep prices as low as possible.
- 2.14 In this context, the Commission considers that developing an effective retail price monitoring regime for the Territory involves:
- ensuring electricity industry participants and customers have access to the key information necessary to make informed investment and consumption decisions, and to determine if the terms and conditions of supply (price/performance) are reasonable; and
 - ensuring there are adequate incentives for electricity service providers to strive to maintain and improve service performance, and keep costs to a minimum, while there is no effective competition in the generation or retail market sectors.

Summary of terms of reference

- 2.15 The terms of reference for this review require the Commission to:
- examine the options for a retail price monitoring regime for electricity customers in the Territory;
 - propose design options, reporting and disclosure arrangements for a retail price monitoring regime that complements the existing complaints mechanism available under the *Electricity Reform Act*; and
 - recommend a preferred option for the design of a retail price monitoring regime, and provide plans for the implementation of the proposal.
- 2.16 In undertaking the review the Commission is to take into account:
- the objective of a retail price monitoring regime in the Territory context;
 - the longevity of the regime and the market conditions that would warrant monitoring to cease, or monitoring arrangements to be revised;
 - the practical implementation requirements of a retail price monitoring regime; responsibility for oversight of the regime; and arrangements for collecting and reporting data, with an emphasis on the treatment of commercially sensitive data;
 - interstate experience of price oversight in contestable markets; and
 - all relevant economic and policy developments, including current and forecast economic conditions, the proposed National Emissions Trading Scheme and the expanded renewable energy target.

Overview of Issues Paper and submissions

- 2.17 The Commission released an Issues Paper on 20 February 2010 to initiate the review and to obtain comment from interested parties on the options and considerations for developing a retail price monitoring regime.

2.18 The Issues Paper set out four options:

- disclosure of profitability of PWC business activities, involving the reporting of information on the revenue, costs and profits of PWC Generation, Networks and Retail to assist measuring if prices were allowing monopoly profits.
- reporting of the estimated benchmark costs and prices of an efficient service provider, involving the development of an average 'efficient' price against which PWC's performance could be measured. This work would develop estimated cost reflective prices for each customer group (including small customers).
- reporting of price indices and benchmarks of costs with other jurisdictions, involving the development of price indices for monitoring of price movements on a consistent basis over time. This work could also facilitate benchmarking PWC's prices and costs against those of peers elsewhere in Australia.
- doing nothing, and continuing to rely on existing mechanisms to give customers certainty about prices and costs.

Summary of submissions

2.19 The Commission received three submissions to the Issues Paper from the Energy Users Association of Australia (EUAA), the Northern Territory Major Energy Users (NTMEU) and PWC.

2.20 The Commission held a stakeholder forum on 17 March 2010, to facilitate discussion of the issues associated with developing a retail price monitoring framework for the Territory.

Energy Users Association of Australia

2.21 EUAA expressed the view that establishing effective competition, by focusing on the structural reform of the Territory electricity industry, is the most appropriate way of counteracting PWC's monopoly position.

2.22 In the absence of competition, the EUAA considers that comparative cost benchmarking could assist firms in assessing whether efficient outcomes are achieved. The EUAA notes that the AER has statutory requirements to benchmark the costs of electricity network businesses in the NEM, and that this experience may be relevant.

Northern Territory Major Energy Users

2.23 NTMEU considers price monitoring as the third best option after, respectively, effective competition and price regulation. However, in the absence of competition or price regulation, the NTMEU supports greater transparency of information accompanied with analysis of efficient costs. Such information would assist large customers in deriving their electricity charges to determine whether they are efficient and cost reflective.

2.24 NTMEU contends that aspects of the different options identified by the Commission could be used to deliver more efficient outcomes. Measures proposed by NTMEU included:

- improved disclosure of financial and planning information;
- price monitoring accompanied with the threat of further action in the event of price monitoring is proved to be ineffective;
- establishing a dispute resolution mechanism, with the Commission as a mediator/arbitrator.

Power and Water Corporation

- 2.25 PWC considers that the review has not demonstrated that PWC has the ability to abuse market power under the current framework. PWC contends that the existing arrangement for oversight of market behaviour are adequate while price monitoring under the options proposed by the Commission will require additional resources without any real benefit to customers. PWC considers that customers will not be able to analyse the information made available in their assessment of the appropriateness of their price.
- 2.26 PWC noted that price monitoring will provide commercial information that may result in unfair competitive advantage to new market entrants. This could result in PWC being left with stranded assets. PWC also considers that the obligation to release certain information may compel PWC to breach confidentiality clauses in a number of commercial contracts with suppliers and customers.
- 2.27 PWC proposes that the Commission continue with the existing arrangements, with the option of reintroducing the contestable pricing guidelines which were withdrawn in 2007 and the generation price monitoring regime that operated to 2005.⁸

Purpose of this paper

- 2.28 This Draft Report sets out the Commission's proposals for a retail electricity price monitoring regime. The Commission is seeking comment from interested parties on the proposals and implementation considerations by 16 July 2010.
- 2.29 The Commission is to submit a Final Report with final recommendations to the Treasurer in September 2010.

Timetable for review

- 2.30 The timetable guiding the consultation process for this review and the submission of the Final Report to the Treasurer is set out in table 2.1 below.

Table 2.1: Review timetable

Due Date	Action
Friday 18 June 2010	Release of Draft Report
Friday 16 July 2010	Submissions on Draft Report due
Friday 6 September 2010	Final Report provided to Minister

⁸ For further details on contestable pricing guidelines and generation price monitoring, refer to the Utilities Commission's Issues Paper on the Review of Options for the Development of a Retail Price Monitoring Regime for Contestable Electricity Customers, February 2010, pages 11 and 47.

CHAPTER 3

Objectives of price monitoring

Price monitoring arrangements

- 3.1 Price monitoring involves the publication of key information to increase scrutiny of prices and market performance where there is little competition. This information disclosure enhances market transparency, and improves community understanding of the workings of the market.
- 3.2 Price monitoring generally takes two forms, depending on the level of competition in the market:⁹
- to support regulation of a firm with monopoly power. Public reporting of key information encourages firms to achieve formal or informal price, profit and quality targets, or face more intrusive action by an independent regulator (e.g. price controls) if outcomes are not considered acceptable; or
 - to observe and understand the performance of a firm or market where there is competition, but a perception of misuse of market power. Public reporting of key information is intended to allay concerns about perceptions of misuse of market power through greater scrutiny of a firm's performance.
- 3.3 Price monitoring in Australia is generally used to measure market performance for a defined period of time, to address public concerns about pricing outcomes and potential misuse of market power in markets with monopoly characteristics. Firms are required to provide specific cost, profit and price data at regular intervals. Industries where pricing monitoring arrangements have applied include airports, petrol retailing and stevedoring.
- 3.4 However, ongoing concerns about the potential for misuse of market power in a market are more commonly managed through the national access regime or industry specific legislation.¹⁰
- 3.5 The electricity industry is an example, with generation, network service providers and retailers required to comply with price and service performance targets, and report key information. The type and detail of information disclosed is defined in the market framework (e.g. the National Electricity Rules in the NEM or *Electricity Reform Act* in the Territory), and is expected to facilitate the effective and efficient operation of the market. Electricity industry participants and customers should have sufficient

⁹ Productivity Commission, August 2001, Review of the Prices Surveillance Act 1983: Inquiry Report, Report No 14, pages 47-8.

¹⁰ Productivity Commission, August 2001, Review of the Prices Surveillance Act 1983: Inquiry Report, Report No 14, page 49.

information to understand the workings of the market, and make informed investment and consumption decisions.

The case for price monitoring in the Territory

3.6 The Commission considers a competitive electricity market with multiple generators and multiple retailers vying for market share is the most effective way of achieving the price and performance outcomes preferred by customers.

3.7 As noted by the Australian Energy Market Commission (AEMC) when assessing competition in electricity and gas retail markets in South Australia:¹¹

Markets are better able to process complex and rapidly changing information, particularly in relation to changes in costs, in a timely manner and coordinate the actions of market participants. When competition is effective, markets maintain prices in line with real costs of supply as they adjust to changing conditions.

3.8 There are multiple generators and multiple retailers competing in the NEM and Western Australia electricity market. Customers are able to compare the price/performance bundle offered by competing retailers, and are able to move to another retailer if they consider the offer is more favourable to their circumstances.

3.9 The competitive disciplines in the NEM (in particular) encourages retailers and generators to strive to maintain and improve service performance, and keep prices as low as possible to retain and gain market share. Further, this competition lessens the need for more intrusive regulation to ensure no firm is misusing market power, and that pricing outcomes are reasonable.

Views in submissions

3.10 PWC is of the view that the existing market and regulatory arrangements are designed to provide customers and the Territory Government with confidence that PWC is operating in a fair and reasonable manner. PWC expressed concern about price monitoring adding costs and requiring significant resources for no benefit to customers.¹²

3.11 In contrast, the EUAA conveyed the frustration of its members at the high prices, poor service, and poor responsiveness of the monopoly provider in the Territory. These high prices had to be eventually passed on to their customers. Some of the EUAA members were considering the option of investing in their own generation or closing their operations.¹³

3.12 Contrary to the PWC view, the deficiencies of the existing market and regulatory arrangements are well documented, including the inability of existing arrangements to

¹¹ Australian Energy Market Commission, December 2008, Review of the Effectiveness of Competition in Electricity and Gas Retail Markets in South Australia, Second Final Report, page 25.

¹² Power and Water Corporation, April 2010, Review of Retail Price Monitoring for Contestable Electricity Customers – Power and Water’s Response to Issues Paper, pages 8 and 2.

¹³ Energy Users Association of Australia, April 2010, Review of Options for the Development of a Retail Price Monitoring Regime for Contestable Electricity Customers.

promote confidence in the community and stakeholders that PWC is not misusing market power, or is operating in a manner consistent with good industry practice. The deficiencies of the *Electricity Reform Act* and associated legislation are the reason for the series of reviews the Commission is undertaking, including this review, at the direction of the Territory Government.

- 3.13 The situation in the Territory is quite different to the NEM, PWC has an effective monopoly in the, notionally competitive, electricity retail and generation sectors. Moreover, the Territory market framework does not require disclosure of the type or detail of information that is available in the NEM (or Western Australia). In particular, there is no regular publication of a wholesale electricity reference (spot) price, and limited system planning information.
- 3.14 The lack of any real threat of competition means that PWC (retail or generation) has less incentive to strive to maintain and improve service performance, and keep costs and prices as low as possible. Further, the lack of key information diminishes the likelihood of market entry and competition, and reduces the ability of (large) customers to understand the workings of the market, or to determine if the terms and conditions of supply contracts are reasonable.
- 3.15 The Commission considers that PWC will remain the monopoly generator and retailer for the next few years, at least until regulatory and market conditions in the Territory are more conducive to market entry by alternative generators and retailers, and competition. In this environment, the Commission considers that there is a strong case for a set of arrangements to measure the performance of the Territory's electricity industry, and price/performance outcomes, until there is effective competition in the Territory electricity market.

Objectives of price monitoring in the Territory

- 3.16 The Commission considers that the objective of a retail price monitoring regime in the Territory is to support the effective operation of the electricity market by:
- giving customers and industry participants the key information necessary to make informed investment and consumption decisions;
 - giving customers the key information necessary for them to be confident that the terms and conditions of supply (price/performance) offered by PWC Retail are reasonable; and
 - establishing adequate incentives for PWC to strive to maintain and improve service performance, and to keep costs and prices to a minimum, while there is no effective competition in the generation or retail market sectors.
- 3.17 The Commission is of the view that an effective retail price monitoring regime in the Territory should be transparent, flexible and for a defined period. The information provided should be consistent and relevant, and there should be consideration of the cost to service providers of providing information, relative to the benefits to the users.

- 3.18 The Commission notes that the objectives of the Territory's market framework include to:¹⁴
- promote efficiency and competition in the electricity supply industry;
 - promote the safe and efficient generation, transmission, distribution and selling of electricity; and
 - protect the interests of consumers of electricity.
- 3.19 In particular, the Commission considers that a retail price monitoring regime should facilitate greater information disclosure to assist customers understand the workings of the market, and the relationship between prices and costs. In turn, this would facilitate commercial negotiations between large customers and PWC (as monopoly supplier) on the terms and conditions of supply contracts.
- 3.20 Further, the Commission is of the view that, a retail price monitoring regime in the Territory would provide information that could be used by alternative electricity service providers to assess the merits of market entry. Given PWC's current effective monopoly in generation and retail sectors, greater information disclosure is an important step in the development of competition in the Territory.
- 3.21 The Commission notes that there is no competition in the Territory's electricity market, and that the market rules and regulatory framework have not been able to support the development of competition, or give customers confidence about pricing and performance outcomes. As such, price monitoring in the Territory is partly a response to the deficiencies of the regulatory framework, and about adopting what is accepted practice elsewhere in Australia; and partly a response to the monopoly position (at this time) of PWC.

¹⁴ *Electricity Reform Act*, s3.

CHAPTER 4

Proposed price monitoring arrangements

Key design features

- 4.1 The Commission considers that a retail price monitoring regime is necessary in the Territory, to enhance information disclosure to facilitate informed investment and consumption decisions, and to give customers confidence that the terms and conditions of supply offered by PWC are reasonable.
- 4.2 The Commission considers that price monitoring arrangements for the Territory should involve:
 - disclosure of key information, with the intention of moving to a point where the type and detail of information made available is equivalent to NEM arrangements;
 - monitoring of market behaviour and pricing outcomes; and
 - a complaints mechanism to support monitoring of market behaviour and pricing by providing a trigger for an independent investigation of pricing outcomes.
- 4.3 The Commission expects the price monitoring arrangements to establish reliable and consistent data on pricing outcomes. This data should assist large customers assess whether the contract prices offered by PWC are reasonable, and reflect the cost of supply. Further, the data will provide the Commission with a baseline for monitoring of PWC's revenues, prices, costs and performance, against relevant targets.
- 4.4 The Commission notes that retail tariffs for small customers for 1 July 2009 to 30 June 2013 are set in a Pricing Order by the Territory Government. Industry regulators elsewhere in Australia have a role in advising governments on the level of retail tariffs for small customers, and this advice is commonly given subject to detailed terms of reference defining the scope of the exercise and considerations.
- 4.5 Although the tasks are not directly related, assessing the level of retail tariffs for small customers after 30 June 2013 would involve a similar exercise as required to monitor PWC's market behaviour and pricing outcomes. In particular, both would probably require examination of PWC's disaggregated accounts and may require additional data from PWC. Consequently, the Commission notes that a role in advising on retail tariffs for small customers would effectively occur in parallel with monitoring of PWC's market behaviour and pricing outcomes – an activity important to larger customers.

Proposed information disclosure arrangements

- 4.6 The Commission considers that customers assessing the terms and conditions of supply offered by a retailer require price and performance information.
- 4.7 The price of electricity for an end user comprises the generation (wholesale) component, network (transport) component, and the retail (administration) component. In the NEM, the generation and network components are readily known to customers. Wholesale prices published through the spot market mechanism, and the network component to be fixed by the regulator (e.g. the AER, the national equivalent of the Commission). Retail competition has proved effective in most NEM jurisdictions, resulting in competitive retail margins being negotiated between retailers and customers.
- 4.8 Effectively, large customers (without access to customer protection arrangements available to households) can measure wholesale price movements over time, and make some estimates of wholesale prices in the future (which may include the use of published prices in the futures market for wholesale electricity). Customers also know the network charge set by the regulator for a five year period. With this information, customers have a reference point to compare the prices offered by retailers.
- 4.9 According to a study of electricity costs for small customers in Queensland, the proportion of the electricity price accounted for by each component, on average, is about, 44 per cent for generation, 47 per cent for networks, and 9 per cent for retail.¹⁵ A similar study for the Australian Capital Territory found that, on average, generation costs accounted for 47.3 per cent, network costs for 41.5 per cent, and retail costs for 6.5 per cent, of the electricity price for small customers.¹⁶
- 4.10 The price information available to customers in the NEM is not readily or regularly available for the Territory. Although the network component is fixed by the Commission, customers do not have access to a wholesale reference price, with which to measure price movements over time (e.g. hourly, daily, seasonally, yearly). PWC advised in its submission that generation costs represent about 75 per cent of the average price for large customers.¹⁷ This advice, taken at face value, demonstrates that the wholesale energy component represents a substantial portion of a customer bill, providing a strong case for greater transparency of generation prices.

¹⁵ Queensland Competition Authority, June 2009, 2009-10 Benchmark Retail Cost Index – Final Decision, page 5.

¹⁶ Independent Competition and Regulatory Commission, March 2010, Model of Determining the Energy Purchase Cost Component of the Transitional Franchise Tariff, Report 3 of 2010, Appendix 2, page 42.

¹⁷ Power and Water Corporation, April 2010, Review of Retail Price Monitoring for Contestable Electricity Customers – Power and Water’s Responses to Issues Paper, page 10.

- 4.11 Performance information is more readily available to Territory customers, through reporting on reliability and customer service performance, and the adequacy of generation and network capacity to meet demand. Further, the type and detail of performance information is being examined by the Commission through separate reviews underway or starting later in 2010. In particular, the Commission is considering reliability standards in a Review of Electricity Standards of Service, and reporting of planning information in a Review of System Planning, Monitoring and Reporting.

Disclosure of a wholesale electricity reference price

- 4.12 The Territory's market framework leaves decisions about wholesale prices to be made through bilateral contracts negotiated between a generator and retailer. The Northern Territory Ring-Fencing Code requires PWC to provide limited information on generation prices to the Commission, for use in the event the Commission is required to investigate conduct between the PWC Generation and PWC Retail business units. However, there is currently no public information on how wholesale prices are derived, or the underlying generation costs.
- 4.13 This lack of information means customers are unable to make informed decisions about contract terms by assessing if the wholesale price available from PWC is reasonable. Further, there is little opportunity for customers, the Territory Government or the Commission to hold PWC accountable for the cost and price of electricity. The lack of information also hinders the development of effective competition in the Territory, as market observers are unable to assess the viability of entering the market.
- 4.14 In the NEM, wholesale electricity prices are determined in real time, with generators offering to supply specific amounts of electricity at certain prices. From all offers submitted, AEMO determines the spot price for each half hourly trading interval in each of the regions of the NEM. Electricity is dispatched to meet demand according to a merit order, from the lowest to highest offer as demand increases. The spot price is the price of wholesale electricity at a point in time. However, the cost passed on to consumers is not necessarily reflective of the spot price as generators, retailers and customers may enter in contracts to manage their exposure to price volatility.
- 4.15 The spot price (and generator offers) is based on a complex range of variables, such as the short run marginal cost (operating costs), individual generator's operating decisions and generation capacity and network constraints (giving generators temporary market power to increase prices).
- 4.16 A wholesale electricity price is published for the Western Australian, south west interconnected system. Each day, market participants advise the Independent Market Operator of their bilateral contract position and make bids to buy and offers to sell electricity in each half hourly trading interval on the following day.
- 4.17 The approach recognises that most electricity in Western Australia is traded through bilateral contracts between generators and market customers, but

allows market participants to trade around their bilateral position, producing a net contract position.¹⁸

- 4.18 In both the NEM and Western Australia, a wholesale reference price is publicly available. This information can be used by customers to inform negotiations with retailers on the terms and conditions of supply contracts.

Views in Submissions

- 4.19 No submissions to the Issues Paper discussed in detail the merits of disclosure of wholesale electricity prices. NTMEU supported publication of a standing offer wholesale price by PWC Generation, subject to the Commission's oversight.¹⁹

Commission's draft decision

- 4.20 The Commission recommends the disclosure of a wholesale electricity reference price, involving publication of the wholesale reference price (and associated energy sent out), at the generation facility gate, for defined intervals after a reasonable period.
- 4.21 The Commission expects that the wholesale reference prices will reflect the generation component of the average customer price, so that customers have relevant information with which to measure wholesale price movements over time and estimate future price movements. The Commission considers that this proposal should be implemented so as to be consistent with moving towards alignment with NEM arrangements.
- 4.22 The Commission considers that disclosure of a wholesale reference price in the Territory would increase transparency and accountability of pricing outcomes, by:
- providing customers with consistent, auditable and public information on movements in wholesale prices;
 - signaling potential generation investment opportunities to market entrants and market observers;
 - providing large customers with a point of reference on wholesale prices for comparison with terms and conditions offered by PWC in negotiations; and
 - supporting monitoring of potential misuse of market power.
- 4.23 The Commission notes that the final retail price can differ between customers depending on their consumption patterns, peak demand, load factors and load profile. Additionally, discounts may be offered to certain users. Consequently,

¹⁸ Independent Market Operator, September 2006, Wholesale Electricity Market Design Summary, page 45.

¹⁹ Northern Territory Major Energy Users, March 2010, Utilities Commission's Review of Options for the development of a retail price monitoring regime for contestable electricity customers, page 32.

the wholesale component of a final price may differ from the wholesale reference price. However, the Commission considers that disclosure of a wholesale reference price (and associated energy volumes) will provide sufficient information to customers to assess if the wholesale price component of an offer is reasonable, and to assess the merits of alternative supply options.

Disclosure of non-price information

4.24 Price monitoring arrangements also often require disclosure of non-price information to enable customers to assess if the price/performance bundle is reasonable. For example, the New Zealand Commerce Commission is of the view that placing information and analysis about regulated businesses in the public domain can provide some of the incentives found in competitive markets such as:²⁰

- better information to customers and other interested parties so that customers' countervailing market power is enhanced, thereby potentially limiting excessive profits and engaging consumers with their suppliers in determining the desired level of service quality;
- better information to the owners of regulated businesses by allowing comparisons with businesses in other areas and helping in identifying opportunities;
- potentially increased incentives for the management of regulated businesses to improve relative and absolute performance; and
- consistent information to the regulator thereby assisting the Commerce Commission in making determinations in respect of the other regulatory instruments.

4.25 The type and detail of non-price information provided through information disclosure regimes in other jurisdictions can include:²¹

- financial statements based on consolidated financial accounts can provide information for assessing market behaviour and pricing outcomes, if accompanied by explanations of the underlying assumptions and methods used to prepare the accounts. The methods for the allocation of costs and revenue should be transparent.
- operational statistics for key input and output prices and quantities reported at an aggregate and detailed level, developed using index based techniques, can provide additional information in support of the financial statements. Information produced using index-based techniques can make information easier to understand and allow monitoring of the service provider's performance over time. Examples are the percentage growth in input quantities and prices, percentage growth in output quantities and prices, percentage growth in profit, and total factor productivity (percentage growth of outputs less percentage growth of inputs).

²⁰ Commerce Commission, July 2009, Information Disclosure – Discussion Paper, page 10.

²¹ Productivity Commission, 2004, Review of the Gas Access Regime, pages 360-72.

- dealings with associates, to monitor if a service provider is treating their associates more favourably than others. This information can be reported as part of the financial and operational statistics information disclosure.
- measures of service quality, such as reliability and customer service.
- third party access negotiations, to monitor if negotiations about access were successful or not. Information reported could include the number of negotiations commenced, the number of agreements made, the number of negotiations in dispute, and the duration of negotiations.

Views in submissions

- 4.26 NTMEU submitted that a number of its members had expressed concern about the lack of transparency in the activities between PWC Retail and PWC Generation, and the need to gain access to such information in order to assess the reasonableness of PWC offers.²²
- 4.27 The PWC and EUAA submissions did not support the disclosure of financial reports on the profitability of PWC activities (Option A in the Issues Paper). PWC indicated that the 'average' customer would not necessarily know how to interpret the financial information. PWC cited, as an example, the case of two pre-contestable contracts for which the prices are no longer cost reflective and are included in the profit and loss reports. PWC also found that the proposal to make its pricing methodologies public would unfairly place it at a disadvantage when in the case of emerging competition. PWC noted that there was no precedent set by other Australian jurisdictions for disclosing this level of information to large individually contracted customers.²³
- 4.28 EUAA expressed doubts as to the usefulness of the disclosure of the profits of PWC activities as 'profitability is not necessarily linked to efficiency, and efficiency should be central policy objective'. Furthermore, EUAA expressed concern about PWC using the allocation of common costs to disguise their true financial position.²⁴
- 4.29 NTMEU indicated dissatisfaction with the lack of transparency of PWC's operations, which prevents its members (large energy users) assessing if the terms and conditions of supply contracts offered by PWC are reasonable. NTMEU suggested disclosure of the following non-price information:²⁵

²² Northern Territory Major Energy Users, September 2009, Submission on the Utilities Commission Review of Full Retail Contestability for Northern Territory Electricity Customers Issues Paper.

²³ Power and Water Corporation, April 2010, Review of Retail Price Monitoring for Contestable Electricity Customers – Power and Water's Response to Issues Paper, page 12.

²⁴ Energy Users Association of Australia, April 2010, Review of Options for the Development of a Retail Price Monitoring Regime for Contestable Electricity Customers.

²⁵ Northern Territory Major Energy Users, March 2010, Utilities Commission's Review of Options for the Development of a Retail Price Monitoring Regime for Contestable Electricity Customers – Comments on the Issues Paper, pages 20-1.

- disclosure of regulatory accounts for the PWC Generation business unit;
- disclosure of accounting and cost allocation methodologies;
- review of PWC's accounting and cost allocation procedures; and
- development of regulatory guidelines.

Commission's draft decision

- 4.30 The Commission notes that delays in completing contract negotiations between PWC and customers could represent poor customer service. The Commission will consider if monitoring of the negotiation process is warranted as part of the Review of Electricity Standards of Service.
- 4.31 The Commission notes that customers have access to information on generation and network reliability, and customer service performance through the Electricity Standards of Service Code. Forward planning information for the system is provided through the annual Power System Review, which the Commission intends making more comprehensive and consistent with NEM practices.

Monitoring market behaviour and pricing outcomes

- 4.32 The Commission considers that PWC has an effective monopoly in the supply of electricity generation and retail services in the Territory, and the ability to exercise market power in the Territory electricity market. Further, the Commission considers that the potential for market entry and the development of effective competition is not great, at least in the next few years.
- 4.33 In this context, the Commission proposes monitoring of market behaviour and pricing outcomes to assure customers and market observers that the price and performance outcomes in the Territory electricity market are reasonable, and that PWC is not misusing market power.

Options for assessing costs and prices

- 4.34 The Commission has identified two main approaches to assessing the prices and costs of firms operating in markets with monopoly characteristics:
- comparison of the firms' costs and prices relative to peers elsewhere or relative to efficient benchmarks; and
 - a forward looking building blocks analysis of costs.

Comparison of costs and prices

- 4.35 A number of monitoring regimes measure movement in prices using price indices based on a weighted tariff basket. The tariff basket is usually constructed for various customer profiles to account for differences in demand patterns. For example, the Productivity Commission constructed indices of electricity prices by costing 'consumption bundles' for three types of customer in Australia — residential, small to medium business and large business, and

used the indices to compare prices in Canada, Germany, Israel and the United States.²⁶

- 4.36 The advantages of the index based technique are that it is a relatively low cost way of summarising information, and focuses on trend performance over time. Additionally, index based methods make it possible to examine the extent to which an increase in profit is attributable to higher output prices, as opposed to improved productivity and/or lower costs.²⁷
- 4.37 Alternatively, a revenue yield approach can be used as a proxy to measure price movements. The revenue yield approach is where average prices are calculated by dividing total revenue received from all customers by the total number of units sold.
- 4.38 The Australian Competition and Consumer Commission (ACCC) prefers price indices to measure changes in prices, but has used a revenue yield approach where the construction of a price index was too complex, or there were changes to the data set over time. For example, the ACCC used 'aeronautical revenue (adjusted) per passenger' as a proxy to measure airport pricing. The ACCC also reported on the percentage change in published charges and the percentage change in average prices, where possible.²⁸ The ACCC considers that price monitoring is likely to be more effective when it involves direct monitoring of observable prices, but recognises that specific information may be difficult to obtain where prices are the subject of confidential and commercially sensitive contracts.²⁹

Building block analysis

- 4.39 Building block analysis refers to the rigorous assessment by an independent party of a firm's costs and prices to determine if the costs are prudent and efficient. The approach is used for electricity network regulation in Australia, and to assess retail tariff levels for small customers.
- 4.40 For example, the Queensland Competition Authority (QCA) undertakes a yearly assessment of the regulated retail tariff (for small customers) at the direction of the Queensland Government. The approach adopted by QCA is based on the analysis of changes in underlying costs of a retailer and determines an allowable percentage change in the retail tariff.

²⁶ Productivity Commission, 2001, Electricity Prices and Cost Factors.

²⁷ Productivity Commission, 2004, Review of the Gas Access Regime.

²⁸ Australian Competition & Consumer Commission, Price Monitoring and Financial Reporting – Price-Monitored Airports, 2003-04.

²⁹ Australian Law Reform Commission, 2004, Genes and Ingenuity - Gene Patenting and Human Health, s25.29.

- 4.41 The Benchmark Retail Cost Index (or the BRCI) has three components: the cost of (wholesale) electricity, distribution and transmission network costs, and retail costs. Network and generation costs account for 91 per cent of the total cost of supplying energy.
- 4.42 The calculation of the generation cost component of the BRCI in a particular year is based on the QCA's view of the likely total cost of purchasing energy to supply the NEM load in that year. The QCA estimates the long-run marginal cost (LRMC) of energy in that part of Queensland connected to the NEM, and the actual cost of purchasing energy to meet the NEM load in the tariff year, and then calculates a weighted average of these two costs. The estimated LRMC is based on a hypothetical economically efficient combination of generating technologies in Queensland. The cost of energy also includes the cost of NEM participant fees and the cost of ancillary services.
- 4.43 In considering the long-run marginal cost, QCA estimates forecast changes in inputs such as:
- power plant capital costs using a capital cost index based on four variables: a producer price index (PPI) for basic metals, a PPI for cement, a price index for imported materials, and index for labour costs;
 - fuel costs (oil, gas and coal);
 - weighted average cost of capital for industry participants; and
 - operating and maintenance costs.
- 4.44 The cost of purchasing energy is estimated using a risk management portfolio based on a mixture of spot purchases and derivative contracts, including determining the contract type, volume purchased and the time of the day these purchases occur and then applying benchmark prices to these purchases.
- 4.45 The estimated transmission costs are based on the revenue cap determined by the AER. The distribution costs are based on the revenue requirements determined by the regulator for the local distribution network service providers. Adjustments are made to reflect subsequent changes since the price determination, such as the inclusion of pass-through costs during the regulatory period.
- 4.46 In considering retail costs and margin, the QCA is required to consider costs to a representative retailer, rather than an actual retailer, that already has a significant share of the market. Retail costs comprise retail operating costs, customer acquisition and retention costs (customer churn) and a retail margin estimated of five per cent providing for the various risks inherent with the business.³⁰
- 4.47 The Australian Capital Territory regulator, the Independent Competition and Regulatory Commission (ICRC), adopts a similar approach for determining

³⁰ Queensland Competition Authority, June 2009, 2009-10 Benchmark Retail Cost Index.

retail tariffs for small customers as used by QCA. However, the ICRC focuses on estimating the costs incurred by the incumbent retailer, rather than a representative retailer.³¹

Views in submissions

- 4.48 The Issues Paper set out options for scrutiny and monitoring of prices, costs and performance of firms or markets not subject to effective competition, and firms have the ability to exercise market power. Submissions addressed the merits of these options in detail.
- 4.49 PWC considers that the review does not demonstrate that PWC has the ability to abuse market power under the current framework, and does not adequately discuss the information currently available to the Commission.
- 4.50 PWC is concerned that public scrutiny of pricing may hinder PWC's ability to compete effectively in the market. PWC offered the Commission information on its retail pricing methodology (a standard building block model), and generation data, subject this information remaining confidential.
- 4.51 PWC suggested that there are limitations on benchmarking of prices, and comparing pricing outcomes in the Territory with interstate peers. The Commission is not convinced this is the case, as there is comprehensive information about the costs associated with the generation, transport and retailing of electricity across a range of environments in Australia. Further, the Commission does not consider that PWC faces unique challenges in supplying electricity relative to electricity service providers elsewhere in Australia.
- 4.52 EUAA supports comparative performance and cost assessment, or benchmarking, of PWC's costs and prices, despite noting challenges in normalising the data. EUAA noted that the AER is required to benchmark the costs of electricity network businesses in the NEM.
- 4.53 PWC considers that the existing market and regulatory arrangements are sufficient to monitor market behaviour and pricing outcomes, to the satisfaction of customers and stakeholders. In particular, PWC considers that the Commission could form a view as to the reasonableness of generation prices without publishing any data, and noted that this data is commercially sensitive. PWC added that such an approach would assist the Commission in comparing prices between PWC Retail and Generation, should a customer make a complaint with the Commission.
- 4.54 NTMEU considers that oversight of PWC is warranted. NTMEU suggested that firms in a monopoly position will commonly argue that information is commercially sensitive to avoid disclosure. In PWC's case there is no competitor now or in the foreseeable future.

³¹ Independent Competition and Regulatory Commission, April 2010, Retail Prices for Non-contestable Electricity Customers 2010-2012, Report 5 of 2010.

- 4.55 NTMEU also considers that disclosure of information in itself is of little use if the Commission does not provide a view on the efficiency of costs and reasonableness of prices.
- 4.56 The Commission is not convinced that PWC's market share would be much affected by the public release of information on costs and prices, at least in the short term, given the challenges currently facing a firm wanting to compete in the Territory market. Further, although an adverse outcome for PWC's market share, competition could have a net benefit for the community through more innovative service delivery and lower prices. The Commission considers that PWC's monopoly position makes a case for rigorous public scrutiny of PWC's costs and prices.
- 4.57 PWC supports the restoration of the generation price monitoring regime – which was initiated in 2003, and involved the Commission measuring PWC's generation prices to report to the Territory Government. PWC advises that the issues of data quality and absence of a relationship between wholesale and retail prices, that led to the regime to be abandoned from 2006-07, are now resolved.
- 4.58 PWC also supports the re-introduction of the contestable customer guidelines, introduced in 2001, but revoked in 2007. The guidelines were to provide PWC with guidance of pricing conduct that could give rise to a finding of anti-competitive market behaviour.

Commission's draft decision

- 4.59 The Commission recommends the introduction of new arrangements to monitor PWC's market behaviour and pricing outcomes, until there is effective competition in the Territory electricity market.
- 4.60 The Commission notes that PWC's market behaviour is the focus of the Ring-Fencing Code. In particular, the Ring-Fencing Code obliges PWC to provide the Commission with information on the commercial dealings between business units. However, current monitoring of market behaviour has not provided customers with confidence that PWC's pricing outcomes are cost reflective or efficient.
- 4.61 The Commission recommends investigation of PWC's costs and prices to ensure that customer tariffs are cost reflective, and that the costs involved represent no more than the reasonable long run cost of supplying electricity.
- 4.62 The Commission expects that the assessment would involve a building block analysis of each component of the average retail price. The first assessment could be undertaken by the Commission in parallel with developing advice to the Territory Government on tariff levels for the next Pricing Order applying to small customers.
- 4.63 The Commission also recommends regular reporting of PWC's pricing outcomes, based on the previous generation price oversight methodology and,

possibly, the use of price indices and benchmarks. The Commission would report regularly on:

- the average revenue per unit of electricity recovered from customers attributable to PWC Generation, PWC Networks and PWC Retail; and
- the relationship between the indicator of average price and estimates of the reasonable long run cost of wholesale electricity; and
- comparing the firms' costs and prices relative to similar firms elsewhere or relative to efficient benchmarks.

4.64 The results of this investigation should be made public to support confidence in the wholesale electricity reference price disclosure mechanism. The Commission acknowledged PWC's concerns about the disclosure of commercial information. However, the Commission considers that, while PWC is a monopoly, there is a strong case for ensuring there is sufficient information available to customers to observe and understand PWC's pricing outcomes, reducing the risk for perceptions of misuse of market power.

Customer complaint mechanism

4.65 The Commission is of the view that the proposed information disclosure arrangements should give large customers a greater ability to assess and negotiate contract terms. Further, the proposals for monitoring market behaviour and pricing outcomes, should give assurance to customers that PWC is operating efficiently, and pricing outcomes are reasonable. As such, the Commission considers that contract terms are a matter for negotiation between PWC and each large customers.

4.66 However, the Commission considers there is a need for a mechanism to trigger an investigation of PWC's behaviour or pricing outcomes to provide customers with an additional safety net.

4.67 Currently customers can request the Commission to investigate a specific complaint about PWC's pricing conduct. Contrary conduct is defined as something contrary to the conditions of a licence, or the objects of the *Electricity Reform Act* which are:³²

- to promote efficiency and competition in the electricity supply industry;
- to promote the safe and efficient generation, transmission, distribution and selling of electricity;
- to establish and enforce proper standards of safety, reliability and quality in the electricity supply industry;
- to establish and enforce proper safety and technical standards for electrical installations;

³² *Electricity Reform Act*, s3.

- to facilitate the maintenance of a financially viable electricity supply industry; and
- to protect the interests of consumers of electricity.

4.68 A complaint may only be made by a customer (or an electricity service provider) if it is adversely affected by the alleged conduct or non-compliance of the firm. The Commission may only investigate a complaint if:³³

- the customer can demonstrate that they are, or may be, adversely affected by the alleged conduct;
- the customer can demonstrate that they have made a genuine, but unsuccessful attempt to resolve the matter with the electricity entity; or
- the Commission does not consider the complaint frivolous or vexatious.

Experience to date with the customer complaint mechanism

4.69 The Commission has only received one formal complaint about PWC's conduct since 2000. The Commission found that PWC did not engage in contrary market conduct. However, the lack of complaints is probably not evidence of customers' acceptance, with customers known to have expressed dissatisfaction to the Commission (e.g. through the NTMEU) and to the Territory Government about PWC's negotiating process.

4.70 The Commission notes that the Territory's market and regulatory framework was designed in expectation of customers having a choice of multiple retailers and bargaining power, equivalent to the experience of the NEM. As such, the complaint mechanism appears to operate as a last resort, and is not designed to address general customer concerns about the conduct of negotiations.

Contestable pricing guidelines

4.71 In September 2001, the Commission published Contestable Pricing Guidelines to provide guidance to PWC about the types of pricing conduct that could give rise to a finding of anti-competitive and discriminatory conduct following a complaint being lodged against it.

4.72 To avoid a finding of anti-competitive pricing, the Commission set out that:

- PWC Retail had to be able to demonstrate that the bundled retail price quoted to a customer was to be reflective of the incremental costs incurred in supplying the services to that customer (including retail, network and wholesale energy costs); and
- PWC Generation had to be able to demonstrate that the wholesale energy price was based on the long-run incremental costs of generating for that retailer.

4.73 The guidelines were withdrawn in April 2007 after the Commission concluded that they were no longer relevant given the market conditions.

³³ *Electricity Reform Act*, Division 8, ss48-51.

Views in submissions

4.74 NTMEU indicated that the reasons for large customers not using the existing complaint mechanism are:³⁴

- a lack of certainty about what constitutes contrary conduct;
- the relative stringent criteria that must be met before the Commission can become involved in a complaint;
- the formality of the investigation process the Commission must follow;
- the Commission's powers being limited to making recommendations to the Minister on its findings; and
- large customers being exposed to significant legal and other transaction costs.

4.75 NTMEU suggested that a trigger mechanism be developed whereby the threat of more stringent regulatory intervention would replace price monitoring, in the event of PWC's conduct being found to be contrary with its licence obligations. NTMEU also suggested the introduction of a dispute resolution mechanism involving the Commission as a mediator/arbitrator.³⁵

Commission's draft decision

4.76 The Commission recommends that customer complaint mechanism be amended to:

- better define what constitutes 'contrary conduct' – this could include the duty to negotiate in good faith;
- give the Commission greater flexibility and discretion about initiating an investigation of a complaint;
- widen the scope of matters the Commission could investigate – this could include provisions in relation to:
 - the negotiation process such as failure to comply to a pre-defined timeline for initiating, progressing and finalising negotiations; failure to negotiate in good faith; failure to provide a written response to queries from customers within agreed timeline; or provision of inaccurate information.
 - PWC's inability to demonstrate how offered prices are derived, and whether prices are cost-reflective.
- reduce the formality of the investigation process;
- make public the outcome of the investigation, subject to relevant confidentiality restrictions, to provide additional transparency about the operation of the market; and

³⁴ Northern Territory Major Energy Users, March 2010, Utilities Commission's Review of Options for the Development of a Retail Price Monitoring Regime for Contestable Electricity Customers – Comments on the Issues Paper, page 19.

³⁵ Ibid, page 25.

- provide the Commission with greater flexibility and discretion to remedy a matter.

4.77 The Commission will also consider introducing customer pricing guidelines.

4.78 The Commission does not consider that there is a need at this stage to introduce a negotiate/arbitrate process. The Commission considers that this approach would unnecessarily draw the Commission into commercial negotiations, and could develop into a formal and legal process.

CHAPTER 5

Implementation considerations

Implementation of proposals

- 5.1 The terms of reference ask the Commission to provide detailed plans for the implementation of any recommendations. The implementation considerations and plans will be discussed in more detail once the Commission has finalised the recommendations for the Final Report.

Legislative head of power

- 5.2 A number of the Commission's proposals could not be implemented without legislation to establish a head of power, and to define the obligations on PWC, the Commission and others. In particular, the proposal to establish a wholesale electricity reference price should be supported by legislation. The Commission considers that the rules of the proposed price monitoring regime should be clearly defined in legislation to ensure consistent, accountable and transparent operation of the regime.
- 5.3 The Commission will give further consideration to potential legislative arrangements when developing recommendations for the Final Report. One option to be considered is the development of a Code, authorised by new regulation approved by the Territory Government.

Confidential and commercial information

- 5.4 The Commission recognises that the proposed price monitoring regime will involve greater information disclosure, including what may currently be deemed confidential or commercial information.
- 5.5 PWC considers that disclosure of generation prices and pricing methodologies could, in an open market, damage its competitive position by providing commercially sensitive information to market entrants.³⁶
- 5.6 The NTMEU submitted that firms with monopoly characteristics tend to avoid information disclosure by claiming that it is commercially sensitive. It found that such reason was invalid due to the absence of any competition currently and for the foreseeable future. The NTMEU contended that, when considering disclosing certain information, the Commission should assess the firm's commercial interests against

³⁶ Power and Water Corporation, April 2010, Review of Retail Price Monitoring for Contestable Electricity Customers – Power and Water's Response to Issues Paper, page 2.

those of the public. The NTMEU added that the lack of information was an impediment to effective competition.³⁷

- 5.7 The Commission will give further consideration to matters associated with confidential and commercial information when developing recommendations for the Final Report. However, the Commission considers that the monopoly position of PWC establishes a case for more information disclosure, rather than less, particularly where there are concerns that the firm has the potential to misuse market power, and where customers and market observers do not have sufficient information to make informed investment and consumption decisions.

Data quality provided to the Commission

- 5.8 The Commission is of the view that consistency and accuracy of the data are essential underpinning principles in the development of an effective retail price monitoring regime as information will be most of use to stakeholders if it allows comparisons over time and against benchmarks.
- 5.9 NTMEU contended in its submission that the effectiveness of the price monitoring regime is, among other things, the accuracy of the information, and that the information disclosed should be prescribed and subject to audit. NTMEU added that, a provision should be included to discourage inaccurate, and delays in, information disclosure.
- 5.10 The Commission will give further consideration to matters associated with placing additional requirements on PWC to provide accurate information to be provided to the Commission or to be publicly disclosed.

³⁷ Northern Territory Major Energy Users, March 2010, Utilities Commission's Review of Options for the Development of a Retail Price Monitoring Regime for Contestable Electricity Customers – Comments on the Issues Paper, page 37.