

Review of the Northern Territory Electricity Ring Fencing Code and Guideline



Submission to the Utilities Commission of the
Northern Territory on draft decision

May 2020

Introduction

Power and Water Corporation (Power and Water) welcomes the opportunity to respond to the Utilities Commission of the Northern Territory (Commission) draft decision on the Electricity Ring Fencing Code and Guideline (NT Ring Fencing Code).

In September 2019, Power and Water provided a submission on the Commission's Issues Paper which supported amendments to the Code if they met the principles of fit for purpose, efficient and equitable. We noted that Power and Water provides a range of essential services, including some services that are subject to competition. We advocated for a Code that is tailored to the unique structure of the Northern Territory industry, and which best meets the long-term interest of electricity customers.

We consider the Commission's draft decision broadly reflects these principles. For instance, we strongly support the Commission's pragmatic approach to minimise overlap or duplication of regulations under the national ring-fencing framework. However, we have suggested areas where further efficiency could be achieved by minimising regulatory costs whilst still delivering on the Commission's ring-fencing objectives. Below we have responded to each of the Commission's recommendations in its draft decision, and also commented on other stakeholder submissions.

Response to recommendation 1 – Application of NT Ring Fencing Code

The Commission has proposed that the NT Ring Fencing Code no longer apply to Power and Water business units covered by the AER's national ring-fencing guideline. The Commission gives effect to the policy decision by amending the definition of a 'prescribed business' in the Code to exclude distribution services provided by PWC's Power Networks business which are subject to economic regulation by the Australian Energy Regulator (AER). We strongly support the Commission's view that duplication with the AER's ring fencing guideline would lead to confusion and misunderstanding. In our view, duplication would also result in higher regulatory costs that would be passed through to customers in the Northern Territory.

Our understanding is that the amended definition of 'prescribed business' would include our System Control business and the electricity service businesses we operate in unregulated areas outside of the AER's jurisdiction.

We support the Commission's decision to apply ring fencing obligations to Power and Water's System Control business. The Commission has demonstrated the potential for competitive harm in carrying out our regulated functions such as dispatching generators and managing outages. We consider ring fencing requirements would help us better demonstrate to stakeholders that our current operations do not discriminate in favour of Power and Water competitive business units.

However, we request that the Commission re-consider whether ring fencing requirements should apply to our electricity businesses operating in regional and remote areas. Power and Water has five generation plants in regional areas and provides full end-to-end electricity services in Indigenous Essential Services (IES) remote communities. In our submission to the Commission's Issues paper we noted these services are non-contestable in a practical sense. We submitted that there is no potential for cross-subsidisation, discrimination, or any other anti-competitive market impacts. The Commission's draft decision does not discuss the points raised in our submission or analyse the issue. In our view, applying ring fencing in these areas would increase regulatory costs without benefit to the end use customer.

We support the Commission’s decision to exclude Jacana and Territory Generation from ring fencing requirements, despite having the same owner as Power and Water. We consider this is ‘fit for purpose’ in the Northern Territory where Jacana and Territory Generation are not monopoly service providers.

Response to recommendation 2 – Obligation not to discriminate

We support the amended provision in the draft NT Ring Fencing Code requiring a prescribed business to not discriminate between customers or class of customers. However, we note the draft decision suggests the obligation will apply to Power and Water Corporation (that is, all business units) rather than a prescribed business. We suggest the Final decision clearly reflects the intent of the NT Ring Fencing Code by noting that the obligation relates to a prescribed business only.

We also support a specific non-discrimination requirement on our System Control business to not discriminate in favour of our Power Networks, Gas Supplier business or any other business unit. We consider the non-discrimination requirements are sufficient to address the perceived issues of stakeholders about the operating decisions of System Control without requiring more prescriptive requirements. This is discussed further below in our response to recommendations 4 and 5.

We request the Commission to provide guidance on what constitutes discrimination by addressing this issue through guidelines under clause 1.6 of the Code. We note that the Commission is proposing to revoke the existing 2009 guidelines and does not intend to make new guidelines at this time. We request that the Commission reconsider this in relation to the meaning of discrimination, particularly given the deletion of clause 10(b) of the Code which had given some flavour to the concept of discriminate. Our view is that discrimination should meet a threshold of carrying on its business in a way which purposefully and unreasonably favours or provides a benefit to another part of its business to the detriment of an external party. The guidelines could for example provide some hypothetical case studies to draw out examples of purposeful discrimination.

Response to recommendation 3 – Cost allocation procedures

We recognise that the Commission is seeking more transparency on cost allocation processes. We agree that improved transparency would provide greater confidence to stakeholders that our monopoly electricity businesses are not cross-subsidising contestable businesses.

The Commission has sought to address this issue by requiring a prescribed business to submit draft Cost Allocation procedures within three months of the commencement of the revised NT Code. The procedures must be the same as the AER Approved Cost Allocation Method (AER approved CAM) except to the extent otherwise approved by the Commission.

We support the inclusion of a minimum requirement on prescribed businesses¹ to demonstrate that costs are allocated fairly and reasonably. However we have concerns with the level of prescription in the proposed amendments to the NT Ring Fencing Code, particularly the requirement to apply the AER approved CAM to prescribed businesses.

The AER approved CAM is specifically directed at services subject to AER regulation. It serves a broader function than ring fencing. Its primary purpose is to assist the AER in its economic regulatory functions

¹ Our understanding of the amended Code is that the cost allocation requirement only relates to a prescribed business. However, the Commission’s draft decision states that the requirement relates to all regulated lines of business, which could be interpreted to include water and sewerage. We suggest that the Commission’s final decision makes clear that the requirements only relate to a prescribed business.

including assessment of expenditure, performance reporting and benchmarking. Accordingly, our AER approved CAM sets out details on how we allocate costs to standard control and alternative control services, and between operating and capital expenditure.

This level of detail is not necessary for ring fencing purposes. We support a simplified requirement on Power and Water to develop procedures which demonstrate that costs are allocated fairly and reasonably to a prescribed business. We consider that the procedures should not be prescribed in detail, nor should the procedures be the same as the AER approved CAM. We would like to work with the Commission in developing a fit for purpose procedure that addresses the issue that the Commission wishes to resolve.

In any case, we request that the Commission consider extending the timeframe for Power and Water to submit cost allocation procedures from 3 months to 6 months given the substantial work that would be involved.

Response to recommendation 4 – Generator dispatch decisions

Stakeholders have raised concerns with the objectivity of Power and Water's System Control decisions on generator dispatch. Power and Water recognises that improved transparency would provide stakeholders with greater confidence of our decision-making process. However, we categorically state that our generator dispatch decisions do not purposefully discriminate in favour of our gas business, and no evidence has been provided by stakeholders or the Commission to the contrary.

Below, we provide our view on each of the Commission's recommendations that seek to address perceived issues with System Control's generator dispatch decisions.

Non-discrimination requirements on System Control to not favour our Gas Business

Power and Water agrees with the Commission that ring fencing obligations should apply to our System Controller business.² This would build confidence among our stakeholders that generator dispatch decisions made by System Control do not discriminate in favour of our contestable gas business.

We agree with the Commission that the most effective mechanism to address perceived issues with our decision making is a specific obligation in the NT Ring Fencing Code for the System Control to not discriminate in favour of our gas business. The amendment would require Power and Water to develop auditable compliance frameworks, monitor ongoing compliance, and report any breaches to the Commission. We agree with the Commission that no further prescription is required in the NT Ring Fencing Code to address the perceived issue of stakeholders on our generator dispatch decisions.

We support the Commission's view that Power and Water should develop and publish a clear set of protocols for generator dispatch as part of the implementation of a wholesale electricity market for the Darwin-Katherine system. We agree this should be undertaken outside of amendments to the NT Ring Fencing Code.

Power and Water has actively been working to develop generation dispatch procedures aimed at improving the transparency of our decisions. We will be actively including stakeholders in our consultation processes. We expect this will take between 12 and 18 months to implement and publish.

In addition to procedures, we are also developing a Dispatch Tool that allows for formula-based

² We note this would supplement the existing arrangements regarding segregation of decision making and information between the System Controller, Market Operator and other parts of Power and Water. We noted in our submission to the Issues Paper that obligations already exist in respect of Section 40 of the Electricity Reform Act 2000, requiring the Power System Controller to preserve the confidentiality of information.

methods to dispatch generation. We consider this will provide for improved transparency and auditability of System Control decisions and reduce perceptions of subjectivity in our decisions. This will complement existing measures we take, such as publishing the daily dispatch of generators on our webpage as required by the Interim Northern Territory Electricity Market (I-NTEM) rules. We expect the Dispatch Tool to be an iterative process with our stakeholders, and as such take 12 to 24 months to develop.

For these reasons, we agree with the Commission's decision not to prescribe procedures in the NT Ring Fencing Code.

Physical separation

We are concerned that physically separating our System Control offices from our Gas business will increase our costs to customers if we are required to establish new or expanded accommodation. We note that the definition of 'offices' in the AER's National Ring Fencing Guidelines explicitly allow for separated parties to be located within the same building provided there is separate and secure access. We suggest that the Commission adopt the AER's definition of "offices" in the final amendments of the NT Ring Fencing Code.³

We note that in some extenuating circumstances, physical separation may not be practical. In these circumstances we consider that the NT Ring Fencing Code should allow Power and Water to request a waiver to the requirement similar to the waiver provisions in the AER National Ring Fencing Guidelines.

We agree that the NT Ring Fencing Code should not extent to staff sharing. This is particularly important in the context of senior management and directors who make decisions to affect Power and Water as a whole.

Response to recommendation 5 – Outage dispatch decisions

In submissions to the Issues paper, stakeholders also questioned whether System Control's outage management decisions favour our Power Networks business. While our decisions are not influenced by Power Networks, we recognise that ring-fencing requirements would provide greater confidence to stakeholders of the objectivity of our process.

We therefore support the Commission's decision to include a specific obligation in the NT Ring Fencing Code for System Control to not discriminate in favour of Power Networks. We agree with the Commission that no further prescription is required in the NT Ring Fencing Code.

We agree with the Commission that transparent outage management procedures would provide greater transparency rather than be included in the NT Ring Fencing Code. In this respect we note that Power and Water is well developed in preparing an Outage Management procedure. We intend to consult with stakeholders on a draft procedure very shortly.

The Commission has also flagged the potential for the NT Government to develop a financial incentive scheme for network service providers to minimise network constraints. We question whether this would mitigate the perceived issues raised by stakeholders on outage management decisions of System Control. We note that transmission service providers in the National Electricity Market are subject to a service scheme which comprises incentives to minimise the effect of transmission outages

³ Section 1.4 of the AER National Ring Fencing Guide set out definitions within the Code. Office is defined as "office means, as the case may be:(a) a building; (b) an entire floor of a building; or (c) a part of a building that has separate and secure access requirements, such that staff from elsewhere in the building do not have unescorted access to it.

on the wholesale price of electricity.⁴ We would recommend a thorough evaluation of the costs and benefits of such a scheme should be undertaken before it is implemented in the Northern Territory for the 2024-29 determination period.

Response to recommendation 6 – Review Code if contestability imposed

We support the Commission’s decision to undertake a review of the Code if new contestable services arise in the Northern Market such as metering or distributed energy resources. We consider that the Commission should apply the same principles as for the review currently being undertaken to ensure fit for purpose and efficient ring fencing requirements.

Comments on specific issues raised by stakeholders on draft decision

We have reviewed the submissions of Jacana and Territory Generation (T-Gen) on the Commission’s draft decision.

Jacana has raised the potential for System Control to favour Power and Water’s gas business in generation dispatch decisions. Jacana has noted that they have no view on whether this is occurring in practice, but regardless they support the Commission’s recommendations to address the issue. They have also asked that System Control publish reasons and justifications for out of merit dispatch on a regular basis to help stakeholders factor this into their own planning. We consider that the issues raised by Jacana will be addressed as we progressively develop systems across the dispatch process over the coming 18-24 months.

T-Gen broadly support the Commission’s recommendations particularly on recommendations to improve the transparency of System Control’s generation dispatch and outage management decisions. However T-Gen raise concerns with the current market arrangements. The crux of T-Gen’s concerns relate to compensation for ancillary support, network support, generator testing, and penalties imposed by Power and Water’s gas unit on T-Gen for inaccurate gas nominations following out of economic merit dispatch by System Control.

We note that these issues are outside of the ring fencing review and should not have a bearing on the Commission’s final decision. We consider that the issues could be raised by T-Gen as part of the market implementation program of the NT Government.

⁴ Australian Energy Regulator, Final Decision, Electricity transmission network service providers service target performance incentive scheme, September 2015, p7