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LETTER OF TRANSMITTAL

The Hon Clare Martin MLA
The Treasurer
Parliament House
DARWIN NT 0800

Dear Treasurer

UTILITIES COMMISSION ANNUAL REPORT 2001-02

In accordance with the provisions of section 35 of the *Utilities Commission Act 2000*, I am pleased to provide to you the Annual Report of the Utilities Commission of the Northern Territory for the financial year ended 30 June 2002.

This report also incorporates information regarding the work carried out by the Commission during the 2001-02 financial year under both:

- the *Network Access Code*, in accordance with section 13(2) of the *Electricity Networks (Third Party Access) Act 2000*; and
- other relevant industry regulation Acts, specifically the *Electricity Reform Act 2000* and the *Water Supply and Sewerage Services Act 2000*.

As such, this Report serves as the annual reports required under these industry regulation Acts.

I also draw your attention to section 35(2) of the *Utilities Commission Act 2000*, which requires that a copy of the report be tabled in the Legislative Assembly within six sitting days after you have received the report.

Yours sincerely



Alan Tregilgas
Utilities Commissioner
for the Utilities Commission
27 September 2002

COMMISSIONER'S OVERVIEW

Year in review

The Commission's focus during the year was on:

- bedding down arrangements in the second full year of the regulatory regime applying to the electricity supply industry; and
- implementing arrangements following conclusion of transitional provisions one year into the regulatory regime applying to the water supply and sewerage service industries.

The activities undertaken by the Commission to these ends are canvassed in the body of this Annual Report.

Also, the Commission was involved from time to time in providing guidance and direction in the contestable sectors of the electricity supply industry. While this role was not always welcomed by the industry participants involved – often for diametrically opposing reasons – the Commission is convinced that a considerable lessening in disputation between participants (and litigation) was the result.

NT Power's decision

The Commission notes with regret NT Power's decision (in August 2002) to cease carrying on operations after 2½ years in the Territory's electricity supply industry. While such a development may be part and parcel of a properly functioning market, contestable customers now lack a choice when it comes to negotiating (or re-negotiating) a contract for the supply of electricity.

The Commission acknowledges that, in the absence of a competitor to Power and Water, economic regulation has an increased role to play as a surrogate for competition particularly on behalf of contestable customers. In playing its role in this regard, the Commission will at all times seek to balance the public benefit against the potential costs that are incurred by regulated entities and the public as a whole from regulatory intervention.

Challenges ahead

The main elements of the Commission's work program over the coming year are:

- to monitor developments in the absence of a competitor to Power and Water, including by monitoring electricity generation charges borne by retailers, and so contestable customers, against levels expected were competition effective;
- to advise the Government on the options for facilitating entry into the electricity retail sector and implementation of full retail contestability;
- to develop recommendations aimed at improving the efficiency and effectiveness of the arrangements facilitating third-party access to regulated electricity networks in the Territory, for consideration in the Ministerial review of the *Network Access Code* due by 30 June 2003;
- subject to the outcome of that Review, to design and implement electricity network price regulation arrangements to apply in

the second (five year) regulatory control period commencing on 1 July 2003;

- to develop and publish a framework for establishing, monitoring and enforcing minimum standards of service in the electricity, water and sewerage services industries; and
- to codify the power system control and coordination arrangements to apply in the lead-up to the availability of offshore gas as an alternative fuel source for electricity generation in the Territory (including any ancillary service provision and pricing).

Other matters

On 16 July 2001, the Regulatory Minister authorised the Commission to assist the SA Independent Industry Regulator with its role as regulator of the Tarcoola-Darwin railway. The resultant arrangements are outlined in Appendix 5.

Finally, I wish to place on the record my appreciation for the commitment and effort displayed during the year – sometimes in difficult and uncharted circumstances – by officers of the Commission and by those management and staff of regulated entities interfacing with the Commission.

*Alan Tregilgas
Utilities Commissioner
September 2002*

LICENSING

The Commission issues licences to persons wishing to carry on operations in the Territory's electricity supply, water supply and sewerage services industries in accordance with the provisions of relevant industry regulation Acts.

Licences on issue

Electricity

At the beginning of the year, licences were held by two electricity entities.

Power and Water Corporation ("Power and Water"), formerly the Power and Water Authority, held four licences:

- system control (expires 30 June 2003);
- retail (expires 31 March 2005);
- generation (expires 30 June 2010); and
- network (expires 30 June 2020).

NT Power Generation Pty Ltd ("NT Power") initially held a combined licence for the generation and sale of electricity to the Territory electricity market issued under the transitional provisions of section 113 of the *Electricity Reform Act*. On 24 October 2001, the Commission issued two licences to NT Power under Part 3 of the Act:

- retail (expires 31 October 2006); and
- generation (expires 31 October 2011).

At the beginning of the year, exemptions were in place affecting a number of independent power producers to enable time for negotiations to be concluded with a view to bringing them under the licensing regime. In June 2002, the Commission granted licences to the following producers whose operations in the electricity supply industry are peripheral to their core business:

- Pine Creek Power Pty Ltd;
- McArthur River Power Pty Ltd;
- Cosmo Power Pty Ltd;
- Central Energy Power Pty Ltd; and
- Energy Resources of Australia Ltd.

During the year, the Commission had discussions with certain generators operating in isolated power systems (such as Nhulunbuy and Alyangula). Substantial progress has been made in addressing the unique requirements of these operators in a manner that will not disrupt arrangements that have worked successfully for all parties for some time. Licences (or exemptions) are expected to be granted during 2002-03.

Water and Sewerage

At the beginning of the year, water and sewerage licences were held by Power and Water under the transitional provisions of the *Water*

Supply and Sewerage Services Act with respect to certain licence areas prescribed by the Minister for Essential Services.

In February 2002, the Commission granted Power and Water the following licences under Part 2 of the Act:

- water supply (expires 31 December 2027); and
- sewerage services (expires 31 December 2027).

Exemptions and exclusions

Electricity

At the end of the year, there were no exemptions in place from the need to hold a licence under the *Electricity Reform Act*.

During the year, the Commission considered whether localised and own-use activities come within the requirement to be licensed under the Act. The Commission has decided that it is appropriate for 'small' operations to be outside the scope of the Act. The Regulatory Minister has approved the drafting of a Regulation under the *Electricity Reform Act* to exclude certain small operations in the electricity supply industry from the definitions of 'generation' and 'selling' of electricity, and thus from the requirement to be licensed. The resultant Regulation is expected to be in place by the end of 2002.

Water and Sewerage

No exemptions have been granted from the need to hold a licence under the *Water Supply and Sewerage Services Act*.

During the year, the Commission held discussions with Power and Water regarding the activities of persons on-supplying water or sewerage services to end-use customers within prescribed licence areas. Rather than seeking the drafting of an on-supply Regulation similar to that applying in the electricity supply industry, the Commission is currently considering the merits of issuing a general exemption under section 26(a) of the *Water Supply and Sewerage Services Act*. Discussions are underway aimed at reaching agreement on appropriate terms and conditions to apply to such an exemption.

Amendments to licence conditions

Power and Water's electricity retail licence

Recognising that some Tranche 1 contestable customers may not have negotiated contracts in place with licensed retailers prior to the expiry of their two year 'grace period' on 1 April 2002, the Commission amended clauses 17 and 21 of Power and Water's retail licence to provide for 'post-grace period arrangements'. The effect of these amendments was to oblige Power and Water, with effect from 28 February 2002:

- to offer to sell electricity to a contestable customer who has not entered into a negotiated contract with a licensed retailer by the end of their grace period;
- to include in the standard terms and conditions of that offer, the methodology that would be used for calculating default tariffs; and
- 20 business days before the end of the customer's grace period, to write to all grace period customers who have not entered into a negotiated contract with a licensed retailer, notifying them

that the grace period will end on the specified date and advising them of the terms and conditions of the default contract.

The amendments had the purpose of ensuring continuity of supply for contestable customers by nominating Power and Water as the 'default retailer' and were effected in a way that ensured uniformity of treatment for all contestable customers who might find themselves 'out of contract'.

As events unfolded, all Tranche 1 contestable customers had negotiated contracts for their electricity supply prior to the expiry of their grace period on 1 April 2002. As a result, there has as yet been no reliance on the amended provisions of Power and Water's retail licence.

Monitoring of licence conditions

Both the *Electricity Reform Act* and *Water Supply and Sewerage Services Act* require licensees to lodge with the Commission an annual return containing the information required by the Commission by condition of the licence or by notice in writing.

While regulation 4(1) of the *Electricity Reform (Administration) Regulations* and Regulation 2 of the *Water Supply and Sewerage Services Regulations* prescribes 1 August as the date by which the electricity, water and sewerage licence returns must be lodged, the Commission has been aware that some of the information, in particular the regulatory financial statements, may not be available by 1 August. Accordingly, the information requirements have been dually categorised into that required by 1 August and that required by 1 December.

Only Power and Water was required to lodge an annual return during the year (with respect to operations in the 2000-01 year).

A licence compliance audit was also carried out on behalf of Power and Water. While reporting that there was a general appreciation of and compliance with the requirements of the licences and the relevant legislation, the audit identified a number of outstanding matters which Power and Water subsequently undertook to address with the agreement of the Commission.

PRICE REGULATION

The Commission regulates certain prices in the Territory's electricity supply industry in accordance with the relevant industry regulation Acts. The Commission does not have an equivalent role in the Territory's water supply and sewerage service industries.

Electricity networks

Under the *Network Access Code* (which is a schedule to the *Electricity Networks (Third Party Access) Act*), the Commission exercises price regulation at two levels.

Revenue caps

The first is by setting the maximum allowable revenue (or "revenue cap") that the operator of a regulated network, currently only Power and Water, is permitted to recover annually from network access tariffs and charges. The *Network Access Code* sets out the methodology to be used by the Commission to determine the network operator's annual revenue cap.

On 17 April 2002, the Commission determined revenue caps to apply during the 2002-03 financial year for the Darwin-Katherine, Tennant Creek and Alice Springs networks. This included the incorporation into the revenue cap arrangements of the Darwin-Katherine Transmission Line.

Network tariffs

The second level of the Commission's price regulation involves consideration and approval of the schedule of network tariffs and charges aimed at recovering the revenue cap.

On 22 May 2002, the Commission approved network tariff schedules for use by the Power and Water from 1 July 2002. The approved tariffs incorporated revisions to the tariffs initially submitted by Power and Water. On 24 June 2002, the Commission published a detailed decision paper entitled *Network Revenue Determinations and Tariff Approvals: 2002-03*.

Discounting guidelines

The approved network tariffs represent 'reference' prices, with actual prices applying in individual cases open to negotiation. In response to uncertainty expressed by both the network operator and network users, the Commission chaired a round table of interested parties exploring where tariff 'discounting' might be appropriate in the Territory context. Subsequently, in May 2002, the Commission published guidelines for the negotiation of discounted network tariffs.

Embedded generation charges

In the absence of generation-related network tariffs in the current approved reference tariff schedule, in March 2002 the Commission approved a framework for use by Power and Water when negotiating agreements for network services for embedded generation and similar situations. Subsequently, in May 2002 the Commission issued an indicative ruling regarding network charges applicable to embedded generation.

Retail prices paid by non-contestable customers

Electricity

Unlike electricity prices paid by contestable customers that are subject to negotiation between these customers and their chosen supplier, electricity prices for non-contestable customers, whether residential or commercial, are regulated directly by the Government. The Government exercises its control over prices via an Electricity Pricing Order ("EPO") made under section 44 of the *Electricity Reform Act*.

The Commission is required to enforce compliance with the EPO as if the EPO were a determination of the Commission under the *Utilities Commission Act*. In April 2001, the Commission advised the Regulatory Minister that the retail price schedules applying to non-contestable customers to be published by Power and Water with effect from 1 July 2001 were consistent with the Government's intentions (and the EPO).

The EPO continues until it is superseded.

Water and Sewerage

Water and sewerage service prices are regulated directly by the Government. Section 60 of the *Water Supply and Sewerage Services Act* provides for prices to be controlled by the Government via a Water and Sewerage Pricing Order ("WSPO") similarly to the arrangements applying with respect to non-contestable customers in the electricity supply industry.

The Commission is required to enforce compliance with the WSPO as if the WSPO were a determination of the Commission under the *Utilities Commission Act*.

On 23 December 2001, the Commission advised the Regulatory Minister that the price schedules to be published by Power and Water with effect from 1 January 2002 were consistent with the Government's intentions (and the WSPO).

On 23 January 2002, the Commission advised the Regulatory Minister that a schedule of charges for the acceptance of trade waste discharges to be published by Power and Water had been developed in accordance with a methodology approved by the Commission as part of the approved *Trade Waste Code* and was consistent with the Government's intentions (and the WSPO).

The WSPO continues until it is superseded.

Community services obligation payments

While the Commission is not directly involved in the Government's regulation of retail prices paid by non-contestable customers in the electricity, water and sewerage service industries in the Territory, from time to time the Government seeks the Commission's advice on related matters. During the year, the Commission's advisory activities in this regard were limited to concluding a valuation for the Regulatory Minister of the community service obligations (CSOs) provided by Power and Water associated with the Government's policies of uniform retail tariffs across the Territory and a below-cost retail price cap in Darwin.

In accordance with the terms of reference provided by the Minister, the Commission's findings are confidential to the Government.

Power system charges

System control charges

The *Electricity Reform Act* requires the Commission to approve charges imposed by the power system controller.

The charges approved by the Commission with effect from 1 July 2002 were unchanged on those approved for the previous year.

Load following charges

The power system controller also was initially assigned a role in settling energy imbalances between generators, which applied out-of-balance energy prices that had been approved by the Commission.

Revisions to the *Network Access Code* that took effect on 1 July 2001 supplanted the need for approved out-of-balance energy prices. The Commission's determination made under the superseded provisions of the Code therefore lapsed. On 12 July 2001, the Commission subsequently determined various system imbalance prices to apply until new economic dispatch arrangements envisaged by revisions to the *Network Access Code* are in place and fully operational.

STANDARDS OF SERVICE REGULATION

The Commission is assigned a role by the *Electricity Reform Act* in both ensuring that the standards of service enjoyed by non-contestable customers in the electricity supply industry do not fall below minimum levels and, in some circumstances, reviewing and revising such minimum standards. The Commission does not have an equivalent role in the Territory's water supply and sewerage service industries.

Setting minimum standards of service

Electricity

Under section 92 of the *Electricity Reform Act*, the standards of service applicable in the year prior to commencement of the Act are the minimum standards to be observed by suppliers to non-contestable customers. The Commission is also empowered to review these minimum standards taking into account, among other things, relevant national benchmarks of service for non-contestable customers.

The Commission has not yet initiated a review of the appropriateness of historical standards of service. During 2001-02, the Commission limited its activities in this area to researching the issues, including by preparation of a draft issues paper. The Commission expects to publish this paper by the end of 2002.

In canvassing the issues, the Commission will take note of the work done by the Steering Committee on National Regulatory Reporting Requirements convened by the Utility Regulators Forum. The Committee has been involved in developing a core set of nationally-consistent performance reporting requirements covering (among other things) service performance of electricity network operators.

Compliance with minimum standards of service

Electricity

Whatever the basis of the standard, the Commission has the responsibility to monitor licensees' compliance with the minimum standards of service set.

The information necessary to enable monitoring of standards of service against the historical levels is only just becoming available. The Commission expects to report on these matters during 2002-03.

CONDUCT REGULATION

The Commission is assigned a variety of roles when it comes to setting/approving and enforcing codes and rules aimed at ensuring appropriate types of behaviour and conduct by licensed or regulated entities in the Territory's electricity, water and sewerage services industries.

Ring-fencing Code

The electricity ring-fencing code developed and published by the Commission took effect on 1 July 2001. The code aims at ensuring that monopoly businesses in regulated industries affiliated to contestable businesses do not discriminate against a competitor of that affiliated business, or financially or competitively advantage that affiliated business to the detriment of a competitor of that affiliated business.

Amendments to the Code

In January 2002, the Commission identified a deficiency in the Code. Contrary to the Commission's intentions, the Code as initially published was insufficient to prevent Power and Water's monopoly businesses (eg. Network and System Control) from sharing commercially sensitive information with Power and Water Generation or otherwise favouring Power and Water Generation to the detriment of its competitors. This deficiency arose because, as initially published, Power and Water Generation was defined solely as a monopoly business under the Code.

In accordance with the amendment provisions set out in the Code, the Commission consulted industry participants and other interested parties regarding its proposed amendments to address the identified deficiency. In April 2002, the Commission published a decision paper entitled *Amendments to the NT Electricity Ring-fencing Code* outlining certain definitional amendments to the Code.

The effect of these amendments was that, for the purposes of the Code, Power and Water Generation (as a whole) is to be treated as:

- a contestable business for the purposes of the conduct of Power and Water's other monopoly businesses (Networks, System Control and Non-Contestable Retail); and
- a monopoly business for the purposes of Power and Water Generation's conduct with respect to Power and Water's other contestable business (Contestable Retail).

Accounting and cost allocation procedures

On 12 November 2001, in accordance with clause 5 of the Code, the Commission approved the accounting and cost allocation procedures as submitted by Power and Water, for use until 30 June 2004.

As part of the accounting and cost allocation procedures the Commission required from Power and Water, and has now received, specific financial information in the form of line-of-business regulatory accounts.

The procedures were developed by Power and Water in conjunction with the Commission and the approval is subject to the following conditions:

- in consultation with the Commission, Power and Water is to review the effectiveness of the procedures prior to the expiry date of the procedures; and
- the procedures must be resubmitted for approval following any changes to the Code affecting the procedures.

Information sharing procedures

On 31 July 2002, in accordance with clause 5 of the Code, the Commission approved the information sharing procedures as submitted by Power and Water, for use until 30 June 2005. These procedures have been approved subject to similar conditions to these applying to the accounting and cost allocation procedures.

Contestable pricing guidelines

In September 2001, as a result of a request from NT Power for the Commission to investigate Power and Water's contestable pricing in accordance with the complaints provisions of the *Electricity Reform Act*, the Commission issued guidelines setting out the Commission's interpretation of:

- clause 4(e) of the Code regarding discriminatory conduct; and
- section 48(1)(b) of the *Electricity Reform Act* regarding conduct that is contrary to the pro-competition and efficiency objects of that Act or the *Utilities Commission Act*

in relation to pricing to contestable customers and third-party retailers.

Contestable Customer Supply Code

On 18 March 2002, the Treasurer as Regulatory Minister approved the making of a Regulation authorising the Commission to make a code to deal with the arrangements necessary to ensure continuity of supply to customers who, for whatever reason, find themselves out-of-contract. The Code is intended to support arrangements currently in place through provisions found in clauses 17 and 21 of Power and Water's retail licence.

On 24 June 2002, the Commission published a draft Code in anticipation of a regulation being made.

System Control Technical Code

Section 38 of the *Electricity Reform Act* requires the power system controller to prepare a *System Control Technical Code* dealing with operating protocols, arrangements for system security and system dispatch, as well as arrangements for the interruption of supply. The Code is subject to the approval of the Commission.

During the year, the power system controller circulated a draft Code among industry participants. The Commission also provided comments and suggestions on the draft Code, including in the context of developing economic dispatch arrangements as required by amendments made to the *Network Access Code* on 1 July 2001.

On 2 August 2002, the Commission approved the *System Control Technical Code* for the length of Power and Water's system control licence.

Ancillary services rules

Regulation 3 of the *Utilities Commission Regulations* grants the Commission authority to make rules and determine prices relating to the provision of ancillary services in the electricity supply industry.

During the year, the Commission carried out preliminary work in this area. In consultation with industry participants, the Commission plans to develop cost-effective and competitively-neutral arrangements for the supply of ancillary services in the Territory's electricity supply industry. A discussion paper canvassing these issues is expected to be published during the coming year.

Trade Waste Code

Under section 83(4) of the *Water Supply and Sewerage Services Act*, the Commission is required to approve a *Trade Waste Code* before the Code is published by Power and Water as a licensee under the Act.

On 10 December 2001, the Commission approved a Code developed by Power and Water in conjunction with industry participants for the duration of Power and Water's water supply services licence.

Metering Code

Under section 72 of the *Water Supply and Sewerage Services Act*, the Commission is required to approve a *Metering Code* before the Code is published by Power and Water as a licensee under the Act.

On 13 May 2002, the Commission approved a Code for the duration of Power and Water's water supply services licence.

POWER SYSTEM MONITORING

In the absence of a separate technical regulator in the Territory or a government department with similar functions, the Commission is required under section 45 of the *Electricity Reform Act* to undertake an annual review of prospective trends in the capacity and reliability of the Territory's power system, and to submit a report to the Regulatory Minister.

2001 Review

In October 2001, the Commission released its first annual review, reporting on the prospects for system capacity and system load. The review found that existing generation capacity in the Alice Springs regulated system was likely to be insufficient by 2003-04, warranting action by the Government aimed at encouraging additional capacity. Existing generation capacity in both the Darwin-Katherine and Tennant Creek regulated systems was found to be sufficient for the foreseeable future.

2002 Review

The Commission undertook work on its second annual review during the year, which is expected to be published by the end of November 2002.

In addition to the matters dealt with in the first annual review, the Commission has been examining the power system's reliability and performance, with the intention of including an analysis of reliability indices in terms of the quantum and frequency of outages, and comparisons with other systems.

Reflecting post-year developments, the Commission also expects to address the gas supply outlook given limits on reserves of gas in Central Australia and the prospects for Timor Sea gas coming onshore.

COMPETITION OVERSIGHT

While the Commission cannot of itself foster competition, it has some residual functions and powers that enable it to monitor competition and suggest market improvements. The principal role the Commission can play in this regard is to ensure that it exercises its functions and powers in regulated monopoly sectors so as to protect competition in contestable sectors upstream and downstream of those monopoly sectors.

Provision of information

Contestable customers

In October 2001, the Commission issued a contestable customer information circular to the tranche of customers that became contestable on 1 April 2002. The circular advised these customers of their rights and obligations in the contestable market and canvassed issues associated with them making informed choices about their electricity supply arrangements.

Post-grace period arrangements

In February 2002, the Commission issued a circular advising contestable customers and retailers of the supply arrangements applying at the end of a customer's two-year grace period.

Market Information

In July 2002, the Commission published market information on the size and composition of the Territory's electricity supply industry, in the 1999-00 and 2000-01 years.

Investigating complaints

Under section 48 of the *Electricity Reform Act*, the Commission is obliged to investigate complaints against any electricity entity made on the grounds that the entity is engaging in conduct that is contrary to the objects of that Act or the *Utilities Commission Act*. Such objects include promoting efficiency and competition in the electricity supply industry.

NT Power complaint

During the year, the Commission undertook preliminary investigations into a complaint made by NT Power relating to Power and Water's pricing practices since the introduction of contestability. The Commission clarified the tests to be met for any anti-competitive conduct to be proven, in part by issuing some *Contestable Pricing Guidelines* in September 2001. The investigation subsequently lapsed following the complainant's decision not to proceed further at that time.

Growing the market

Economic dispatch

In January 2002, the Commission published a background paper entitled *Implementing Economic Dispatch*. The paper canvassed the scope for economic dispatch arrangements in the Territory's power system, aimed at supplementing the existing bilateral contracting arrangements and replacing the initial out-of-balance arrangements.

After consideration of submissions, the Commission decided that the economic dispatch arrangements proposed in Power and Water's submission should be adopted with only minor amendments.

The arrangements were then incorporated into the *System Control Technical Code*, which was subsequently approved by the Commission.

Advice to the Government

Operations of the Acts

Under section 6(b) of the *Electricity Reform Act*, section 10(a) of the *Electricity Networks (Third Party Access) Act* and section 6(b) of the *Water Supply and Sewerage Services Act*, the Commission has the function of advising the Regulatory Minister on the operations of the respective Acts.

The Commission exercises this function by providing written and verbal advice to the Regulatory Minister on matters primarily of an administrative nature. Broad policy advice on economic regulation matters is the primary responsibility of the NT Treasury, although the Commission also puts its view to the Minister where this is necessary or appropriate.

Matters referred by Minister

Under section 6(g) of the *Utilities Commission Act*, the Commission also has the function of advising the Minister on any matter referred to the Commission by the Minister. There were two matters referred to the Commission during the year (as set out below).

Contestable pricing

At the Minister's request, in April 2002, the Commission undertook an assessment of Power and Water's contestable pricing policies and practices since 1 April 2000. In accordance with the terms of reference provided by the Minister, the Commission's findings are confidential to the Government.

Effectiveness of contestability

At the Minister's request, in May 2002 the Commission commenced a review of the effectiveness of contestability to date in both the generation and retail sectors of the Territory's electricity supply industry. The Commission reported to the Minister in August 2002. In accordance with the terms of reference provided by the Minister, the Commission's findings are confidential to the Government.

APPENDICES

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APPENDIX 1

BACKGROUND INFORMATION ON THE COMMISSION

Establishment of the Commission

On 21 March 2000, at the commencement of the *Utilities Commission Act*, the Utilities Commission was established to undertake the administration of economic regulation in nominated industries in the Northern Territory.

Independence and accountability of the Commission

The Commission is a separate administrative unit established within the NT Treasury but it has specific statutory powers and undertakes its considerations independently of Treasury.

The independence of the Commission from the Government, and from any government-owned business operating in industries regulated by the Commission, is achieved by provisions in the *Utilities Commission Act* requiring that:

- the Commission not be subject to Ministerial direction in the performance of its regulatory functions; and
- members of the Commission be appointed for a fixed term and only subject to dismissal before the end of that term on account of misconduct or incapacity.

This independence does not deem the Commission unaccountable. There are several mechanisms in place in the *Utilities Commission Act* that require consistent, effective and accountable regulation on the part of the Commission.

The *Utilities Commission Act* places certain requirements and obligations on the Commission with regard to the regulatory processes it adopts. These requirements aim to ensure regulatory accountability through transparency and public disclosure of regulatory processes as well as the basis of regulatory decisions and reasonable certainty and consistency over time of the outcomes of regulatory processes.

The *Utilities Commission Act* also provides that an affected party can request a review of a decision of the Commission. An affected person may subsequently appeal the outcome of such a review to the Supreme Court. Such appeals may only be made on the grounds that there has been bias, or that the facts on which the decision is based have been misinterpreted in a material respect.

When deciding on determinations or approvals, or when making codes or rules under the *Utilities Commission Act*, the Commission is required to consult with the Regulatory Minister and representative bodies and participants in the regulated industry that the Commission considers appropriate. All decisions by the Commission are required to include a summary of the information on which the determination is based and a statement of the reasons for making the decision.

Under the *Utilities Commission Act*, any information gained by the Commission that could affect the competitive position of a licensed entity or other person, or is commercially sensitive for some other reason, is to be treated as confidential information. Any person performing a function under the *Utilities Commission Act*, or any relevant industry regulation Act, would be guilty of an offence were such information disclosed otherwise than as authorised under a relevant Act.

Powers and functions of the Commission

The *Utilities Commission Act* sets out the Commission's main functions as well as the powers that the Commission may exercise in performing those functions. The key regulatory functions of the Commission in regulated industries (provided for in section 6 of the Act) include:

- to regulate prices charged by government monopoly businesses and regulated industries;
- to perform licensing functions;
- to develop, monitor and enforce compliance with, and promote improvement in, standards and conditions of service and supply;
- to make, and to monitor the operation of, codes and rules relating to the conduct or operations of a regulated industry or licensed entities; and
- to investigate and help resolve complaints relating to the conduct or operations of licensed entities.

In exercising its overall powers and carrying out its functions, the *Utilities Commission Act* obliges the Commission to have regard to the need:

- to promote competitive and fair market conduct;
- to prevent the misuse of monopoly or market power;
- to facilitate entry into relevant markets;
- to promote economic efficiency;
- to ensure consumers benefit from competition and efficiency;
- to protect the interests of consumers with respect to reliability, quality and safety of services and supply;
- to facilitate the maintenance of the financial viability of the industry; and
- to ensure an appropriate return on regulated assets.

The *Utilities Commission Act* defines the Commission's overall functions and powers. Specific responsibilities of the Commission with respect to a particular industry are only assigned to the Commission by provisions in relevant industry regulation Acts.

The relevant industry regulation Acts applying to the electricity supply industry are:

- the *Electricity Reform Act 2000*; and
- the *Electricity Networks (Third Party Access) Act 2000*.

In particular, the Territory's electricity network industry is declared to be a regulated industry (and the Commission assigned the role of regulator) by the *Electricity Networks (Third Party Access) Act*, and the Territory's electricity supply industry more generally is declared to be a regulated industry under the *Electricity Reform Act*.

The relevant industry regulation Act applying to the water supply and sewerage services industries is the *Water and Sewerage Services Act 2000*, which came into effect on 1 January 2001. That Act and its associated regulations require and allow the Commission to undertake certain regulatory functions in the Territory's water supply and sewerage services industries for the provision of those services within a sole provider model.

Related regulatory entities

The Commission undertakes its regulatory functions in the Territory's regulated industries in conjunction with other regulatory entities, notably:

- the "Regulatory Minister", currently the Treasurer;
- the Safety Regulator – now located in the Department of Industry, Business and Resource Development – who has responsibility under the *Electricity Reform Act* to monitor and enforce safety standards, and to establish and enforce safety-related standards for electrical equipment;
- the Chief Health Officer – located in Territory Health Services – who has responsibility under the *Water Supply and Sewerage Services Act* for monitoring and enforcing certain standards with respect to the water and sewerage industries; and
- the NT Ombudsman, who continues to have responsibility for investigating complaints from non-contestable electricity, water supply and sewerage services customers.

Membership of the Commission

Currently, the Commission is comprised of a single member, Mr Alan Tregilgas. The Act makes provision for the appointment of Associate Commissioners when deemed appropriate by the Regulatory Minister, although none have been appointed to date.

Mr Tregilgas was appointed Utilities Commissioner for a four year term commencing on 1 April 2000. In this role, he is also an *ex officio* Member of the Australian Competition and Consumer Commission and a member of the Utility Regulators Forum.

Mr Tregilgas performs the role of Utilities Commissioner part time. He remains a senior associate with Access Economics, the Canberra-based economic consultancy group.

Mr Tregilgas is a former senior Commonwealth, South Australian and Northern Territory Treasury officer. He also spent four years in the early 1990s as a utilities analyst with the Standard & Poor's Ratings Group in Australia and the Asia/Pacific region. For two years in the mid-1980s, he represented Australia at the International Monetary Fund in Washington DC.

As an economic consultant since 1996, Mr Tregilgas has worked with Government agencies in six Australian jurisdictions, including the Northern Territory. He has also advised both the Queensland Competition Authority and the South Australian Independent Industry Regulator.

Mr Tregilgas holds a first class honours degree in economics from the University of Adelaide and a masters degree in economics from the Flinders University of South Australia.

Staff of the Commission

Four staff, employed within the meaning of the *Public Sector Employment and Management Act*, provide support to the Commissioner. The Commission's organisation chart is shown on the following page.

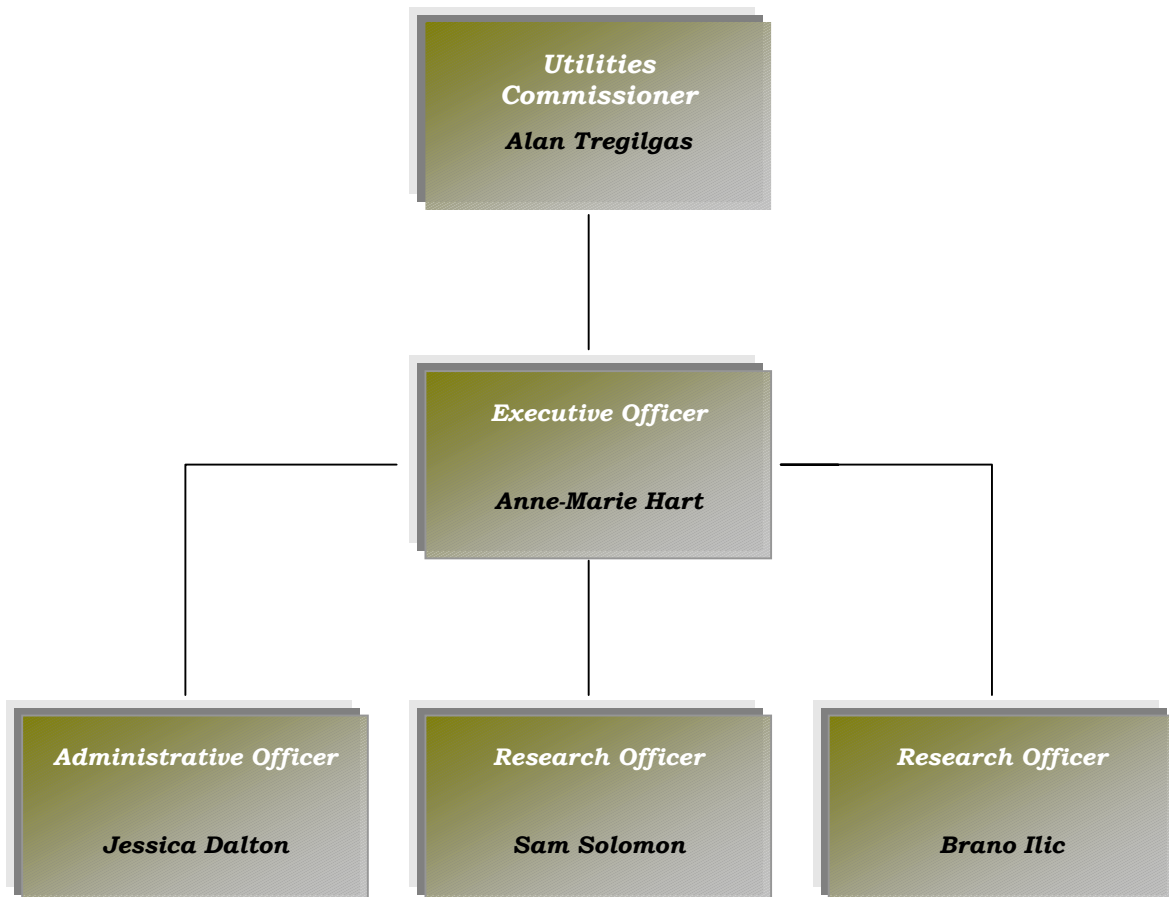
The Commission achieves a balanced working environment through, among other things, participation in corporate sporting events, staff attendance at conferences and training seminars and study-assistance initiatives.

Advisers to the Commission

The Commission also has access to expert technical advice through the engagement of consultants from time to time as detailed in Appendix 6.

Organisational Chart

Utilities Commission of the Northern Territory as at 30 June 2002



APPENDIX 2

DETERMINATIONS AND APPROVALS

Nature of decision	Type of decision	Effective period	Date of decision
Out-of Balance Energy Prices	Determination	1 July 2001 to 30 June 2002	13 June 2001
System Imbalance Prices	Approval	1 July 2001 to 30 June 2002	12 July 2001
Accounting and Cost Allocation Procedures	Approval	Until revoked	10 December 2001
Framework for Negotiating Network Charges for Embedded Generation	Approval	Until revoked	21 March 2002
Trade Waste Code	Approval	1 July 2002 to 30 June 2003	17 April 2002
Network Revenue Caps 2002-03	Determination	1 July 2002 to 30 June 2003	17 April 2002
Metering Code	Approval	Until revoked	13 May 2002
Network Access Tariffs	Approval	1 July 2002 to 30 June 2003	22 May 2002
System Control Charges 2002-03	Approval	1 July 2002 to 30 June 2003	1 July 2002
Information Procedures	Approval	30 July 2002 to 30 June 2005	30 July 2002

APPENDIX 3

PUBLICATIONS

<u>2001-02</u>	
July	<i>NT Electricity Ring-fencing Code</i>
September	<i>Contestable Pricing Guidelines</i>
October	<i>Annual Power System Review</i>
October	<i>Annual Report 2000-01</i>
January	<i>Implementing Economic Dispatch – Background Paper</i>
February	<i>Information Circular No: 5 Contestable Customers</i>
April	<i>Amendments to the NT Electricity Ring-fencing Code – Decision Paper</i>
April	<i>NT Electricity Ring-fencing Code (Amended)</i>
May	<i>Framework for Negotiation of Discounted Network Tariffs</i>
June	<i>Northern Territory Electricity Market Information, 1999-00 and 2000-01</i>
June	<i>Network Revenue Determinations and Tariff Approvals – Decision Paper</i>
June	<i>Contestable Customer Supply Code – Discussion Paper</i>

These publications are available from the Commission’s website at
www.utilicom.nt.gov.au

APPENDIX 4

EXPENDITURES AND RECEIPTS

This Appendix publishes the expenditures of the Commission that are funded directly from Consolidated Revenue, as well as the associated receipts. Expenditures (and associated receipts) funded by a consultancy arrangement between the Commission and the SA Independent Industry Regulator arising from regulation of the Alice Springs-Darwin railway, and which commenced in the 2001-02 year, are published separately in Appendix 5.

NORTHERN TERRITORY UTILITIES COMMISSION EXPENDITURE BY CATEGORY OF COST

Category of Cost	2000-01 \$000	2001-02 \$000
PERSONNEL COSTS	295.2	350.6
Salaries and related costs	285.3	336.6
Superannuation	9.9	14.0
OPERATIONAL EXPENDITURE	234.9	181.3
Consultants Fees	191.8	161.1
Motor Vehicle Expenses	11.1	8.3
Training & Study Expenses	2.9	3.4
Document Production	1.3	2.0
Official Duty Fares	8.2	1.6
Travelling Allowance	0.7	1.3
Other Plant & Equipment	4.0	1.0
Advertising	3.0	0.9
Office Req & Stationery	0.5	0.7
Library Services	0.2	0.6
Communications	0.0	0.2
Recruitment & Relocation Expenses	0.7	0.1
Memberships & Subscriptions	0.1	0.1
Info Technology Services	10.2	0.1
Consumables/General Expenses	0.2	0.0
Furniture & Fittings	0.0	0.0
TOTAL EXPENDITURE	530.1	531.9

NORTHERN TERRITORY UTILITIES COMMISSION RECEIPTS BY ACCOUNT¹

Account	2000-01 \$000	2001-02 \$000
Fees and Charges	116.8	192.1
Licence Application Fees	2.0	4.0
Electricity Licence Fees	114.8	143.1
Water and Sewerage Licence Fees	0.0	45.0
TOTAL REVENUE	116.8	192.1

¹ Section 19 of the *Utilities Commission Act 2000* provides that, unless otherwise directed by the Treasurer, fees and other monies received by the Commission are paid into the Consolidated Revenue Account.

APPENDIX 5

PROVISION OF CONSULTANCY SERVICES TO THE SAIIR

On 16 July 2001, the Regulatory Minister authorised the Commission to undertake the function of assisting the SA Independent Industry Regulator (SAIIR) with its role as regulator of the Tarcoola-Darwin railway. This was an exercise of the Regulatory Minister's power under section 6(1)(h) of the *Utilities Commission Act*, as amended, to confer additional functions on the Commission.

Through a consultancy contract entered into between the Commission and the SAIIR, the Utilities Commissioner has been engaged to work on a part-time basis as Railway Adviser to the SAIIR. In this capacity, the Commissioner has been assigned responsibility for:

- prior to any negotiations taking place for access to the new railway – drafting pricing and service guidelines for use by the track operator and any appointed arbitrator and recommending any pricing-related determinations; and
- once access negotiations commence – drafting the advice or directions required under the *AustralAsia Railway Access Code* relating to operation of the access negotiations provisions of the Code as well as implementation of the SAIIR's guidelines.

This arrangement is on a renewable annual basis.

In turn, and only for the duration of the contract with the SAIIR:

- the income received by the Commission from the SAIIR is paid into Consolidated Revenue, with the Commission's budget allocation being increased by the pre-GST amount;
- up to 50% of the pre-GST amount is allocated to fund travel expenses between the Commission's office in Darwin and the SAIIR office in Adelaide; and
- the remainder of the pre-GST amount received is paid as a temporary allowance to the Commissioner as sole service provider under the contract (with the days involved being additional to the days the Commissioner is contracted to work for the Commission).

The expenditures funded by these arrangements during the 2001-02 financial year, and associated receipts, are set out below:

SAIIR-RELATED EXPENDITURE AND RECEIPTS

<i>pre-GST amounts</i>	2001-02 \$000
Consultancy fees	46.6
Total Revenue	46.6
Salaries and Related Costs	22.4
Official Duty Fares	14.8
Travelling Allowance & Accommodation	6.9
Total Expenditure	44.2

APPENDIX 6

ADVISERS TO THE COMMISSION

Section 14 of the *Utilities Commission Act* authorises the Commission to engage consultants as it considers necessary and appropriate.

In 2001-02, the Commission used the services of the following consultants. The costs for the year totalled \$161,130.

Morgan Buckley

In June 2000, the Commission tendered for the provision of legal services through what is now the Department of Justice. The scope of the legal services required included general legal advice, commercial work, preparation of electricity licences and conduct of litigation, as well as specialised advice on legislative and policy development and change.

Morgan Buckley Lawyers, Darwin, in association with Minter Ellison Lawyers, Adelaide, were the successful tenderers.

During 2001-02, the Commission received advice from Morgan Buckley on the following matters:

- the scope of the Commission's functions and powers;
- development and drafting of the *NT Electricity Ring-fencing Code*; and
- drafting and implementation of Regulations to the *Electricity Reform Act*.

Ernst & Young

In August 2000, the Commission tendered for the provision of accounting and technical services through the Department of Corporate & Information Services.

Ernst & Young, Darwin, were the successful tenderers.

During 2001-02, the Commission received advice from Ernst & Young on the following matters:

- preparation of a review of the prospective trends in the capacity and reliability of the Territory's power system relative to projected load growth;
- development of possible economic dispatch arrangements for implementation in the Territory's electricity generation sector; and
- investigation of likely barriers to entry for new investment in the Territory's electricity generation sector.