

NORTHERN TERRITORY TREASURY PUBLIC SUBMISSION:

UTILITIES COMMISSION'S PROPOSED VARIATIONS TO THE NORTHERN TERRITORY ELECTRICITY RING-FENCING CODE

The Northern Territory Government introduced comprehensive electricity market reforms in 2000. However, competition has not emerged and almost all electricity generation, networks and retail services across the Territory are provided by the government owned, vertically integrated incumbent – the Power and Water Corporation (PWC).

Although the physical characteristics of the Territory impose specific constraints, an essential requirement for efficient electricity supply is an effective regulatory framework that strengthens the long term prospects of competition by minimising the risks faced by investors and consumers

Treasury concurs that a clear and effective ring-fencing regime has a part in achieving these goals by regulating the commercial relationship between a natural monopoly business and related contestable businesses to prevent actual or perceived misuse of market power.

Northern Territory Treasury notes the Utilities Commission's proposed variations to the Electricity Ring-Fencing Code are intended to create the conditions for competition in the future by regulating the commercial relationships between PWC Networks and businesses using the network. Additionally, the draft Code would regulate the commercial relationships between the contestable business arms of PWC and third parties.

Treasury's comments on aspects of the draft Code are provided below.

Cost Allocation and Reporting

The draft Code requires PWC to maintain a separate set of financial accounts and reports for each of its business centres and PWC as a whole, and allocates any costs that are shared between different business centres in compliance with procedures and in a fair and reasonable manner.

This is consistent with the approach taken in the National Electricity Rules (6.15 and 6A.19) which require integrated distribution and transmission network service providers and related businesses to submit their cost allocation methodologies to the Australian Energy Regulator (AER). The Rules also require the AER to make cost allocation and accounting guidelines, but does not specify the content of these guidelines.

Given the unique structure of the Territory market, Treasury acknowledges that there is a case for enhancing confidence in the regulatory regime by giving suppliers and consumers a clear indication of the obligations involved through more prescriptive criteria or guidance on the content and application of accounting and cost allocation procedures.

Conversely, although reporting is one of the tools used to monitor compliance with obligations set out for electricity entities, this must be balanced against

onerous compliance activity and hence Treasury supports the Commission's intent to balance the compliance burden on PWC against the likely benefits.

Third Party Contracts

The proposed Code would extend to regulation of contracts between PWC businesses and third parties to ensure that the provisions of such contracts are "fair and reasonable".

Currently, contractual relationships between electricity suppliers are not specifically regulated in the NEM, with competitive disciplines and with remedies available through common law and the *Trade Practices Act* available to limit actual or perceived misuse of market power.

Treasury acknowledges that, in the absence of effective competition, there may be a case for providing potential or actual competitors with certainty that contracts entered into between PWC and third parties are on efficient and equivalent terms to establish an environment that is conducive to competition.

However, the proposed approach would enable the Commission with the broad discretion to intervene in legitimate commercial transactions. This has the potential to generate significant regulatory uncertainty and discourage market entry. This also could expose the Commission to legal risk in the event that the authority is challenged.

If the Commission is inclined to regulate third party contracts, Treasury considers that greater prescription for exercising this authority; including clearly defined default terms and conditions a robust dispute resolution mechanism is warranted.

Given the potential market ramifications of extending the scope of the proposed Code to third party contracts, clearly defined default terms and conditions should also be established in regulation, rather than a ring-fencing code promulgated and enforced by the Commission. The separation of policy and enforcement functions inherent in this approach is consistent with the policy principles underpinning the National and South-western Australian Electricity Markets and is necessary to provide sufficient transparency and certainty for industry participants.

Treatment of Confidential Information

The draft Code appears to allow the Commission to disclose confidential information where it is considered to be in the public interest and unlikely to cause detriment to the parties involved.

Enabling the regulator to release confidential information is one mechanism for disseminating market information and promoting competitive conduct. However, the proposed degree of discretion to be afforded in the exercising this authority may also act as a deterrent to market entry as well as potentially exposing the Commission to legal risk.

Further, given the commercial and market implications, the treatment of confidential information should be dealt with through legislation rather than industry codes or guidelines. At the national level, the treatment of confidential

information is dealt with in the *National Electricity (South Australia) Act* (Part 3 Division 6). The ability of the AER to disclose confidential information is proscribed, and the AER must follow a specific process. In particular, the AER must first give written notice to such person or entity stating the reasons why disclosure is necessary and allow the person or entity to submit their objections to such disclosure for consideration by AER (s28ZB).

As such, to the extent that the Commission considers the existing statutory information disclosure provisions are inadequate, a review of the relevant sections of the *Utilities Commission Act* would appear to represent a more effective approach.