
LETTER OF TRANSMITTAL

The Hon Syd Stirling, MLA
The Treasurer
Parliament House
DARWIN NT 0800

Dear Treasurer

UTILITIES COMMISSION ANNUAL REPORT 2005-06

In accordance with the provisions of section 35 of the *Utilities Commission Act 2000*, I am pleased to provide you with the Annual Report of the Utilities Commission of the Northern Territory for the financial year ended 30 June 2006.

This report incorporates information regarding the work carried out by the Commission during the 2005-06 financial year under:

- 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 also serves as an annual report on the Commission's activities under each of these other Acts.

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

Yours sincerely



Alan Tregilgas
Utilities Commissioner
for the Utilities Commission
22 September 2006



Level 9, 38 Cavenagh Street Darwin NT 0800

GPO Box 915, Darwin NT 0801

utilities.commission@nt.gov.au

www.utilicom.nt.gov.au

TABLE OF CONTENTS

1.	Commissioner's Overview	1
2.	Licensing	3
	Licences on issue	3
	Exemptions and exclusions	4
	Monitoring of licence conditions.....	4
	Licence fees.....	5
3.	Price Regulation	7
	Electricity networks.....	7
	Retail prices paid by non-contestable electricity customers.....	8
	Wholesale generation prices.....	10
	System imbalance charges.....	10
	System control charges.....	10
	Pricing of ancillary services.....	10
	Pricing of water supply and sewerage services	11
4.	Conduct Regulation	13
	Network Access Code.....	13
	Ring-fencing Code	13
	National regulatory reporting.....	15
5.	Standards of Service Regulation	17
	Standards of service obligations.....	17
	Establishment of minimum standards of service	18
	Compliance with minimum standards of service.....	19
6.	Technical Regulation	21
	Power system monitoring.....	21
	System Control Technical Code.....	22
	Network Technical Code	22
	Energy Loss Factors Code.....	22
	Water Metering Code	23
	Trade Waste Code	23

7. Competition Oversight.....	25
Competition in the NT electricity market	25
Contestability status	25
Provision of information.....	26
Investigating complaints	26
Market developments	26
Appendices	27

Glossary

“Contestable Customer”	means a customer classified by the <i>Electricity Reform (Administration) Regulations</i> as a contestable customer; contestable customers can chose their retail supplier; from 1 April 2002 customers whose annual consumption of electricity is greater than 750MWh are classified as contestable customers
“CSOs”	means community service obligations
“EPO”	means Electricity Pricing Order
“Network Access Code”	means the <i>Electricity Networks (Third Party Access) Code</i> , which is a schedule to the <i>Electricity Networks (Third Party Access) Act 2000</i>
“Non-Contestable Customer”	means any customer other than a contestable customer
“Power and Water”	means the Power and Water Corporation
“Regulatory Control Period”	means the period between major electricity network price reviews by the Commission, during which time the methodology used in regulating prices is held constant
“Regulatory Minister”	means the NT Government Minister with responsibility for the <i>Utilities Commission Act</i>
“Ring-fencing Code”	means the NT Electricity <i>Ring-fencing Code</i> made by the Commission
“WSPO”	means Water and Sewerage Pricing Order

COMMISSIONER'S OVERVIEW

Year in Review

The Commission's focus during the year was on:

- developing and publishing a Standards of Service Code which establishes the basis for setting minimum standards of service benchmarks applying to regulated electricity networks and to non-contestable customers at the retail level, and for the monitoring of actual performance against these minimum standards;
- developing and publishing an Energy Loss Factors Code, which sets out the desired outcomes to be met by any methodology used by Power and Water in future to calculate Power and Water's network energy loss factors;
- publishing the Commission's 2005 annual review of trends in the adequacy and security of Northern Territory's power system, which included an assessment of the arrangements for power system planning and reliability in the Northern Territory; and
- finalising the Commission's review of Power and Water's cost allocation practices and procedures which found that Power and Water's cost allocation policies broadly comply with its regulatory obligations but that the associated documentation is deficient in certain respects.

These and other activities undertaken by the Commission during the year are canvassed in the body of this Annual Report.

Coming Year's Work Program

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

- to contribute to the Government's ongoing review of regulatory arrangements in the NT electricity supply market, including with regard to the possibility of transferring regulatory functions to the jurisdiction of the Australian Energy Regulator and the Australian Energy Market Commission;
- to work with Power and Water to ensure that its internal data collection and recording procedures are adequately documented and sufficiently robust so that financial information provided to the Commission is of the quality necessary for all regulatory purposes; and
- to introduce effective monitoring of Power and Water's actual service performance against the approved minimum standards applying to regulated electricity networks and to non-contestable customers at the retail level.

*Alan Tregilgas
Utilities Commissioner
September 2006*

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

On 1 July 2005, the Power and Water Corporation ("Power and Water") held four licences under part 3 of the *Electricity Reform Act*:

- system control (to 30 June 2008);
- retail (until superceded, surrendered or cancelled);
- generation (to 30 June 2010); and
- network (to 30 June 2020).

Independent power producer licences were also held by the following producers whose operations in the electricity supply industry are peripheral to their core business:

- NGD (NT) Pty Ltd;
- Cosmo Power Pty Ltd;
- Central Energy Power Pty Ltd;
- Energy Resources of Australia Ltd; and
- Solar Power Stations Australia Pty Ltd.

An isolated system licence was also held by:

- Groote Eylandt Mining Company Pty Ltd.

On 27 July 2005, following advice from Cosmo Power that the power purchase agreement with Power and Water for electricity generated from the Cosmo Howley Power Station had expired, but that the agreement for production from the Pine Creek B Power Station has been extended to 30 June 2008, the Commission approved a variation to the licence to reflect these arrangements.

There were no other variations applied for or made to the terms and conditions of these licences during the year.

No applications for licences were received during the year.

Water and Sewerage

On 1 July 2005, Power and Water held the following licences under Part 2 of the *Water Supply and Sewerage Services Act*:

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

On 25 August 2005, the Commission agreed to a variation of Power and Water's Sewerage Services Licence to include Borroloola as a

sewerage supply licence area covered by the licence. However, the licence was subsequently withdrawn following confirmation that the Minister had not, by notice in the gazette, formally declared the area to be a sewerage services licence area at that time.

Following publication of the requisite gazettal notice in the gazette of 14 September 2005, the Commission varied the Sewerage Services Licence issued to Power and Water to include Borroloola as a sewerage supply licence area covered by the licence on 21 September 2005.

In varying the licence, the Commission also removed the requirement for the licence holder to notify the Commission of declarations by the Minister of areas as sewerage supply licence areas, on the grounds that the Commission is satisfied that the onus should not be on a licensee to advise the Commission of Ministerial declarations of licence areas prior to any licence application being made.

The Commission foreshadowed its intention to make a similar amendment to Power and Water's Water Supply licence when it is next varied.

There were no other variations applied for or made to the terms and conditions of these licences during the year.

No applications for licences were received during the year.

Exemptions and exclusions

Electricity

On 1 July 2005, an exemption was current under section 87 of the *Electricity Reform Act*, with respect to Alcan-Gove Pty Ltd's electricity operations in the township of Nhulunbuy.

There were no variations applied for or made to the terms and conditions of the exemption during the year.

No applications for exemptions were received during the year.

Water and Sewerage

On 1 July 2005, a general exemption from the need to hold a licence under the *Water Supply and Sewerage Services Act* for persons on-supplying water services within prescribed licence areas was in place.

There were no variations applied for or made to the terms and conditions of the exemption during the year.

No applications for exemptions were received during the year.

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 both prescribe 1 August as the date by which the electricity, water and sewerage licence returns must be lodged, the Commission does not require the associated financial information to be lodged until 1 December at the latest.

During the year, Power and Water lodged returns with respect to the 2004-05 financial year for each of its licensed areas of operation. These licence returns included an audit of operations authorised by each licence and compliance with licence obligations, undertaken by an independent auditor, Ernst and Young. Ernst and Young's audit found that Power and Water was broadly compliant for each of its licensed operations, although some minor areas of non-compliance were identified. Power and Water had initiated corrective action in each instance and advised the Commission of the process in place to review training arrangements.

For those entities for whom activities in the electricity supply market are not their core business, licence returns are not required to contain the same level of detail as those required from Power and Water.

During the year, the following licensees also lodged returns with respect to the 2004-05 financial year for their licensed areas of operation:

- NGD (NT) Pty Ltd;
- Cosmo Power Pty Ltd
- Central Energy Power Pty Ltd;
- Energy Resources of Australia Ltd;
- Solar Power Stations Australis Pty Ltd; and
- Groote Eylandt Mining Company Pty Ltd.

No substantive issues arose as a consequence of these licence returns.

Licence fees

Both the *Electricity Reform Act* and *Water Supply and Sewerage Services Act* provide that annual licence fees are to be fees fixed from time to time by the Minister as an amount the Minister considers to be a reasonable contribution towards administrative costs.

All licence fees that were due to be received in 2005-06 were paid.

PRICE REGULATION

The Commission regulates certain prices in the monopoly sectors of 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 services industries.

Electricity networks

The *Network Access Code* specifies the price regulation framework to be observed by the Commission and by the network service provider when setting the prices to be paid by network users for the conveyance of electricity through the electricity network.

In the second regulatory control period, which commenced on 1 July 2004, the Commission adopted a price cap methodology, in which a weighted average tariff basket is adjusted annually by an externally-determined price cap escalation factor.

Network Pricing Principles

In October 2005, Power and Water submitted its draft Network Pricing Principles and Methods Statement to the Commission for approval.

The Commission released the draft Statement for public comment. In addition, individual letters were sent to all tranche 1, 2 and 3 contestable customers inviting submissions.

Submissions were received from the Department of Defence and Charles Darwin University.

In considering the draft Statement, the Commission noted the Australian Competition Tribunal's GasNet judgment that the role of a regulator is strictly limited wherever a code only empowers the regulator to not approve a proposal made by the service provider if that proposal is not compliant with stated requirements of that code. In such circumstances – unless specifically empowered otherwise by the code – the regulator cannot make a decision based upon what it thinks is best.

Accordingly, following some minor drafting amendments, on 22 February 2006, the Commission approved the Pricing Principles Statement for use by Power and Water on the grounds that the statement is not inconsistent with the principles laid down in clause 74 of the Code.

The approved Statement forms the basis upon which the Commission will assess proposed network tariffs and charges submitted for approval annually by Power and Water for the remainder of the second regulatory control period.

**Network
Tariffs**

On 31 May 2006, the Commission approved the reference tariffs and charges for standard network access services to apply during the 2006-07 financial year.

Power and Water undertook some minor re-balancing adjustments to the tariffs by generally reducing the tariffs applying to customers using more than 750MWh per annum and increasing the tariffs applying to customers using less than 750MWh per annum. A qualitative assessment against the criteria set out in the 2006 Network Pricing Principles Statement was also provided by Power and Water in the accompanying Statement of Reasons.

**Distribution
System
Extension
Charges**

Section 86 of the *Electricity Reform Act* provides that the Minister may, from time to time, declare an area to be an electricity supply distribution extension area. The owner of each parcel of land within the distribution extension area is liable to pay to the electricity entity licensed to sell to non-contestable customers in the area, a financial contribution towards the cost of extension of electricity supply in the area.

This financial contribution is an amount that must be approved by the Commission as the owner's reasonable share of the capital contribution required by the network service provider, with the capital contribution determined in accordance with the capital contribution principles set out in Part 3 of the *Network Access Code*.

In May 2006, Power and Water submitted its Distribution System Extension Policy and the schedule of financial contributions contained therein for approval as meeting the requirements of sections 86(7) and 86(8) of the *Electricity Reform Act*.

In July 2006, the Commission approved use of the schedule of financial contributions set out in the Power and Water's Distribution System Extension Policy as complying with the provisions of section 86(7) of the *Electricity Reform Act*, subject to the scheduled contributions in a particular case falling within a permissible range of the contribution calculated in accordance with the approved capital contributions policy.

Retail prices paid by non-contestable electricity customers

**Electricity
Pricing Orders**

Electricity prices paid by non-contestable customers, whether residential or commercial, are regulated directly by the Government. This contrasts with electricity prices paid by contestable customers, which are subject to negotiation between these customers and their chosen supplier. 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*.

On 1 July 2005, an EPO was in effect that set the maximum retail prices for electricity and related services supplied to non-contestable customers by Power and Water.

On 29 June 2006, this EPO was superceded by the making of a new EPO by the Minister effective from 1 July 2006. The new EPO increased electricity prices in line with the CPI.

On 1 July 2005, an EPO was also in effect applying to the fourth tranche of contestable customers (who use between 750MWh and 2GWh of electricity per annum) whose prices remained below cost-reflective levels, which maintained prices paid by those customers at the same levels as applied during the previous year. This EPO was to have effect until 30 March 2006. On 30 March 2006, the Minister extended the EPO for a further 3 months.

On 29 June 2006, this EPO was also superceded by the making of a new EPO by the Minister effective from 1 July 2006. The new EPO allowed Power and Water to increase the price charged to those fourth tranche contestable customers whose prices remained below cost-reflective levels in line with the CPI.

In August 2005, the Commission initiated a review into Power and Water's compliance with the EPO issued by the Minister regulating the maximum allowable increase in electricity tariffs for those fourth tranche contestable customers whose prices remained below cost-reflective levels. This review was finalised in October 2005, with the Commission finding that, based on sample data, Power and Water had complied with the EPO.

**Community
Service
Obligations**

Under section 6(g) of the *Utilities Commission Act*, the Commission also has the function of advising the Regulatory Minister on any matter referred to the Commission by the Minister.

From time to time, at the Minister's request, the Commission has reviewed the amounts of, and methods for setting, the community service obligations ("CSOs") payable to Power and Water for electricity provision principally associated with the Government's policies of uniform (non-contestable) retail tariffs across the Territory and a below-cost (non-contestable) retail price cap in Darwin.

In March 2006, the Minister requested that the Commission update its valuation of the uniform tariff and tranche 4 contestable customer community service obligations on Power and Water. The Commission was also asked to provide advice on the incremental cost of extending service provision from the boundary to individual houses within an Aboriginal Urban Living Area (also known as town camps).

Applying a valuation methodology consistent with that used for its 2004 CSO valuation and using updated data for 2004-05, the Commission estimated the values of the CSOs associated with Power and Water's supply of electricity to customers throughout the Territory, as it relates to the coming 2006-07 financial year. Due to deficiencies identified in the cost and asset data provided by Power and Water, an interim finding only was made along with a recommendation that a more comprehensive valuation be undertaken prior to the 2007-08 Budget.

Wholesale generation prices

Recognising the pricing implications that can arise from contestable markets being supplied by a sole supplier, the Government has previously approved the introduction of prices oversight by the Commission of Power and Water's electricity generation business. The objective of this prices oversight is to ensure that individual contestable customers pay no more than the reasonable costs of wholesale electricity.

The Commission conducted its second review of the generation component of electricity prices paid by contestable customers in June 2006, covering the 2004-05 financial year. The Commission found that, during 2004-05, there were some sizeable increases in Power and Water's average wholesale generation revenues per kWh, which now brings them close to or slightly above the Commission's estimates of the reasonable costs of generation. These increases were due mainly to the cost of fuel and a shift in the asset valuation methodology used for pricing from book values to replacement values.

The Commission also noted concerns it had about the reliability of the data provided by Power and Water for this review. It concluded that Power and Water's internal data collection and recording procedures may well be insufficiently robust or reliable to justify the level of analysis undertaken by the Commission.

System imbalance charges

Under the *Network Access Code*, the Commission oversees prices paid (or received) by third-party generators when purchasing (or selling) any mismatches between the energy generated by such generators and the load attributable to end-use customers supplied by these generators.

Following revisions to the *Network Access Code* that took effect on 1 July 2001, in May 2002 the Commission accepted Power and Water's proposed economic dispatch arrangements pursuant to clause 85 of the Code. The Commission continues to defer further development of economic dispatch arrangements predominantly on the basis of the lack of generation competition in the Territory.

System control charges

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

The charges that applied during 2005-06 are those approved by the Commission with effect from 1 July 2004 which continue until superseded.

Pricing of ancillary services

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

The Commission has deferred further development of the pricing for ancillary services until the prospects of generation competition re-emerge in the Territory.

Pricing of water supply and sewerage services

Water and Sewerage

Water supply 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”) similar 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 1 July 2005, a WSPO was in effect that set the maximum retail prices for water supply and sewerage services and related services supplied to customers by Power and Water.

On 29 June 2006, this WSPO was superceded by the making of a new WSPO by the Minister effective from 1 July 2006. The new WSPO increased water supply and sewerage services prices in line with the CPI.

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 conduct by licensed or regulated entities in the Territory's electricity, water and sewerage services industries.

Network Access Code

Review of Code

Third-party access to the services provided by prescribed electricity networks in the Northern Territory is currently governed by the *Network Access Code* which is a schedule to the *Electricity Networks (Third Party Access) Act*.

The Commission reviewed the Code's effectiveness in facilitating competition and the use of networks by electricity generators and retailers and preventing the exercise of market power by the owners/operators of electricity networks, pursuant to section 8(3) of the Act, in 2003.

While the Government has previously accepted recommendations dealing with the price regulation provisions of the *Network Access Code* contained in the Commission's final report, it has yet to announce its response to the remaining (non-pricing) recommendations.

Ring-fencing Code

An Electricity Ring-fencing Code developed and published by the Commission took effect on 1 July 2001 (with subsequent amendments in January 2002). The Ring-fencing 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.

Review of cost allocation practices and procedures

In October 2005, the Commission engaged consultants to assist it in a review of Power and Water's allocation of costs – both operating and capital – between products and customer groupings. The review assessed the extent to which Power and Water's relevant policies and practices, as well as the methods used to implement those policies and practices, are consistent with the objectives of economic efficiency, equity and competitive neutrality.

A draft set of findings and recommendations was provided to the Commission in January 2006, and Power and Water provided comments on this draft in February 2006.

In June 2006, the Commission finalised the review, accepting the findings of the Allen Consulting Group. These findings included that Power and Water's cost allocation policies broadly comply with its legal/regulatory obligations but that the documentation

2005-06

operationalising the approved cost allocation procedures is deficient in certain respects and may result in an unreliable allocation of costs across regions and customer classes.

Power and Water has undertaken to address these issues within an agreed timeframe. The Commission will work with Power and Water over the coming year to ensure that financial information provided to the Commission is of an appropriate quality.

***Procedures
under the
Ring-fencing
Code***

Under the Ring-fencing Code, Power and Water is required to develop, in conjunction with the Commission, accounting, cost allocation and information procedures designed to ensure compliance with its obligations under the Code.

The Commission had previously approved such procedures for use until 30 June 2005, with Power and Water being required, in consultation with the Commission, to review the effectiveness of the procedures prior to that date.

However, in March 2006, the Commission decided to extend the current approvals of these Procedures, thereby postponing reviews of the Procedures under the Ring-fencing Code to a date to be determined.

The Commission had two principal reasons for this decision:

- First, the Government has embarked on a process to consider if and when the Territory's electricity supply industry is to become subject to the jurisdiction of the Australian Energy Regulator and the Australian Energy Market Commission. Until such time as the priority to be given to developing nationally-consistent regulatory instruments becomes clearer, the Commission considers it appropriate to place its reviews of the Procedures on hold.
- Secondly, in view of the findings by the Allen Consulting Group that Power and Water's cost allocation and transfer pricing mechanisms are poorly documented, the Commission's preference is that the Corporation first updates and elaborates documentation of its cost allocation policies and practices before further steps are taken to review the Cost Allocation Procedures under the Code.

The Commission's extension of the existing procedures was subject to the Regulatory Accounts to be prepared for the Commission for the 2005-06 year and beyond including, for comparative purposes, the equivalent financial data for all years commencing with the 2004-05 year along with supporting explanations of any significant year-on-year changes at the item level.

The Commission will consider reinstating reviews of Power and Water's Accounting, Cost Allocation and Information Procedures after the Government decides if and when the Territory's electricity supply industry is to become subject to the jurisdiction of the Australian Energy Regulator and the Australian Energy Market Commission.

National regulatory reporting

In March 2002, a core set of nationally-consistent performance reporting measures developed under the auspices of the Utility Regulators Forum (of which the Commissioner is a member) was published.

In essence, from a Territory perspective, the measures making up the national regulatory reporting standards fall into three categories:

- those measures that Power and Water will report fully;
- those measures that cannot be fully accommodated by Power and Water's existing systems, that will be reported on a reduced basis; and
- those measures for which Power and Water does not currently collect data, which will not be reported pending further consideration.

During the year, Power and Water provided data with respect to the 2004-05 year, again focussing on the main Darwin-Katherine inter-connected system. Reporting on other regional centres (Alice Springs and Tennant Creek) is expected to be phased in over time.

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, in reviewing and revising such minimum standards. The Commission does not have an equivalent role in the Territory's water supply and sewerage services industries.

Standards of service obligations

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.

Draft Code

In August 2005, the Commission released a Draft Standards of Service Code for public comment. The Draft Code proposed the establishment of minimum standards of service benchmarks applying to regulated electricity networks and at the retail level for non-contestable customers (by 30 June 2006), and the reporting of actual standards of service against the benchmarks commencing with the 2005-06 financial year.

Only one submission was received on the Draft Standards of Service Code, being from the Power and Water Corporation.

The Commission also requested that its legal advisers review and provide comments on the Draft Code, including in light of Power and Water's submission.

Final Code

The Commission released the final Standards of Service Code in December 2005, to take effect from 1 January 2006.

The Code applies only to the Power and Water Corporation for the foreseeable future.

The objectives of the Code are to:

- establish minimum standards of reliability, quality and customer service in the NT electricity supply industry;
- develop, monitor and enforce compliance with and promote improvement in standards and conditions of service and supply by Power and Water; and
- require that Power and Water has in place arrangements which regularly report actual service performance against the key service performance indicators in terms of reliability, quality and customer service.

The Code establishes a process by which Power and Water is to set certain minimum standards of service benchmarks to be approved by the Commission. The Code also requires the reporting of actual standards of service against each of the benchmarks, commencing after the end of each financial year from 2005-06.

The Code does not at this stage include any incentive or penalty mechanisms, such as:

- price control adjustments in response to service performance; or
- customer compensation (or guaranteed service level) schemes.

The Commission's view is that the scope for such mechanisms is more appropriately considered in the context of the next network's regulatory reset, due to take effect from July 2009. Decisions on these matters at this later time will also be better informed by the reporting now required under the Code.

Procedural guidelines

Following legal advice which queried the desirability, and indeed, the effectiveness, of including various procedural matters within the draft Code, the Commission excised these from the final Code.

Instead, in March 2006 the Commission released a procedural guideline pursuant to section 7 of the *Utilities Commission Act*, setting out the procedures the Commission will adopt when administering certain aspects of the NT Electricity Standards of Service Code.

Establishment of minimum standards of service

The Code establishes a process by which Power and Water is to set certain minimum standards of service benchmarks.

Specifically, with regard to both its regulated network services and its non-contestable electricity supply services, Power and Water was required to submit to the Commission (for approval):

- by 31 March 2006, its proposed minimum reliability standards; and
- by 30 June 2006, its proposed minimum quality standards and customer service standards.

In July 2006, pursuant to clause 5 of the Northern Territory Electricity Standards of Service Code, the Commission approved the initial minimum standards for reliability, quality and customer service submitted by Power and Water for use until 30 June 2009.

The Commission's approval of the Minimum Standards is subject to the certain conditions including that:

- reporting of actual performance against the approved standards is to include the available time series for each indicator back to 1999-00;
- reporting of actual performance against the approved standards is to be undertaken on a disaggregated basis as and when such disaggregated information becomes available to Power and Water; and

- Power and Water, in consultation with the Commission, is to review the effectiveness of the Minimum Standards prior to 30 June 2009.

Compliance with minimum standards of service

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

Pursuant to clause 8.1 of the Code, Power and Water must as soon as is practicable after the end of each financial year (and no later than four months after that date) report to the Commission as to the actual standards achieved in that year with respect to each of the key service performance indicators nominated in Schedule 1 to the Code.

Once Power and Water has reported to the Commission on actual standards of service attained during the 2005-06 financial year, the Commission will publish a compliance report.

The Commission expects its annual compliance report to facilitate customers, media and other stakeholders in critically assessing and making a judgment on the level of performance by Power and Water compared to the minimum standards of service benchmarks as well as similar service providers elsewhere in Australia. It will also play a role in facilitating informed discussion between consumers and Power and Water on local or generalised standards of service improvements.

TECHNICAL REGULATION

Power system monitoring

Under section 45 of the *Electricity Reform Act*, the Commission is required 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. The Commission undertakes the function in the absence of a separate technical regulator in the Territory or a government department with similar functions.

2005 Review

In January 2006, the Commission released its 2005 Annual Power System Review, reporting on the prospects for system capacity and system load, as well as on the domestic gas supply outlook in the Territory.

The review found that additional capacity is required prior to the commencement of 2008-09 in order to satisfy minimum reserve standards in the Alice Springs system.

For the Darwin-Katherine system, the assessment of capacity adequacy over the medium term depends critically on the reserve standard that is applied. Based upon minimum reserve standards, capacity is adequate through to 2008-09, although conditions are tightening by the last year.

Existing generation capacity in the Tennant Creek regulated system remains adequate over the medium-term period.

Gas Outlook

The Commission also noted that, for the remaining four years of their term, gas volumes available under the existing Amadeus Basin contracts are unlikely to meet Power and Water's gas requirements.

However, even if there is a credible risk that gas supplies will be less than adequate, this does not imply that there is an increased risk of interruptions to electricity supply. Most of Power and Water's gas fuelled generating plant also run on liquid fuel, and Power and Water maintains substantial liquid fuel stocks which can be used to maintain generation in the event of a reduction in gas supply. However, this would clearly be a more expensive outcome.

Subsequent to the release of the 2005 Review, an agreement was signed between Power and Water and ENI to develop the Blacktip field to meet the Territory's long-term gas requirements from 2009.

Network Reliability

As foreshadowed in its 2004 Review, the Commission also included an assessment of the arrangements under which power system reliability (especially network reliability) is addressed in the Northern Territory in the 2005 Review.

The Commission noted that, for all practical purposes, power system planning and reliability (including that for transmission and distribution networks) continues to be managed – as it had been

prior to the market reforms of 2000 – as an internal matter by Power and Water.

The Commission advised the Minister that this is inconsistent with generally accepted industry practice. Among a number of disadvantages, it blurs the distinction between commercial interests and the public interest, makes the planning and investment process opaque and increases the risk that investment decisions may be sub-optimal from a power system perspective.

While acknowledging that Power and Water may have achieved relatively good system reliability outcomes to date in a harsh environment (as evidenced in the most recent industry statistics), the Commission advised the Minister that it is not in a position to provide an assessment of the prospective capacity and reliability of the power system as a whole in the Territory (including that for transmission and distribution networks) while differences with industry practice in other jurisdictions continue.

System Control Technical Code

Section 38 of the *Electricity Reform Act* requires the power system controller to prepare a system control technical code and submit it for approval to the Commission. This code sets out the controller's competitively-neutral operating protocols, arrangements for system security and system dispatch, as well as arrangements for the interruption of supply.

The approved code was not amended during the year.

Network Technical Code

Clause 9(2) of the *Network Access Code* requires Power and Water to prepare and make publicly available a network technical code and network planning criteria. Such a code (and associated criteria) was finalised during 2000.

The approved code was not amended during the year.

Energy Loss Factors Code

Following legal advice on the appropriate legal or regulatory instruments for the establishment of alternative means of determining energy loss factors in accordance with Schedule 13 of the *Network Access Code*, the Commission developed a draft Energy Loss Factors Code and, in February 2006, provided it to interested parties for comment.

On 19 April 2006, the Commission released the Energy Loss Factors Code. The Code sets out the high-level principles underlying the calculation of energy loss factors. Any number of methodologies and approaches could be consistent with these principles and the Code thus allows the network provider to choose from among them in a way that makes most sense in the circumstances.

Section 4.1 of the Code requires that, within three months after the commencement of the Code, the network provider must submit to the Commission for approval a draft calculation methodology for determining energy loss factors for the financial year commencing 1 July 2006 and each year thereafter.

Water Metering Code

Section 72 of the *Water Supply and Sewerage Services Act* requires the licensee to develop and publish a code setting out the arrangements and conditions for installing, testing, verifying and replacing meters owned by the licensee and submit it for approval to the Commission. Such a code was approved on 13 May 2002.

The approved code was not amended during the year.

Trade Waste Code

Section 83 of the *Water Supply and Sewerage Services Act* requires the licensee to develop and publish a code setting out the conditions on which the licensee will approve trade waste being discharged into the licensee's sewerage services infrastructure. A trade waste code must be approved by the Commission. Such a code was approved on 10 December 2001.

The approved code was not amended during the year.

COMPETITION OVERSIGHT

While there are natural limits on the capacity of the Commission to 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 in ways that facilitate competition in contestable sectors upstream and downstream of those monopoly sectors.

In addition, 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.

Competition in the NT electricity market

During 2005-06, Power and Water continued to be the sole supplier in the Territory electricity market.

*Review of
Electricity
Reform Act*

Since the withdrawal of NT Power from the NT electricity market, which left Power and Water as the sole supplier, a number of individual contestable customers have approached the Commission with concerns arising in negotiating electricity supply contracts.

In light of this and other public policy issues that need to be addressed, in June 2005 the Commission provided advice to the Regulatory Minister which concluded that a review of market and regulatory arrangements in the NT electricity supply industry was both timely and necessary.

The Minister acknowledged the Commission's views and advised the Commission that the issues are to be given due consideration as part of a review to be undertaken within government over the coming year of the existing electricity industry regulatory framework.

In May 2006, the Commission was advised that the NT Government has approved the undertaking of a detailed review of possible reforms to the NT electricity regulation regime that might better achieve the objectives of the legislative framework, including the possibility of transferring regulatory functions to the jurisdiction of the Australian Energy Regulator and the Australian Energy Market Commission.

Contestability status

On 19 October 2005, the *Electricity Reform (Administration) Regulations* were amended to provide that a customer's status as a contestable customer may be revoked in some circumstances.

The Regulation requires that a customer must apply to Power and Water for revocation of contestability status in the first instance, but

may apply for a review of Power and Water's decision where such an application has been refused.

On 22 March 2006, pursuant to section 7 of the *Utilities Commission Act*, the Commission issued Guidelines designed to articulate the principles that will underlie any review by the Commission of Power and Water's revocation decisions and to set out the processes the Commission will follow in deciding whether to revoke a customer's contestability status.

Provision of information

Market Information

In September 2005, the Commission published market information on the size and composition of the Territory's electricity supply industry, with respect to 2004-05.

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.

No formal complaints were lodged with the Commission in 2005-06.

Electricity supply contract negotiation

The Commission was again approached during the year by a number of individual contestable customers with concerns arising out of the process of negotiating, or renegotiating, electricity supply contracts with Power and Water.

These concerns included the manner in which default tariffs are determined for contestable customers involved in contract re-negotiations, the provision and extent of pricing information available to customers and the appropriateness of certain contract obligations with respect to confidentiality in the absence of a competing supplier.

In response to specific issues, the Commission sought clarification from Power and Water, and it is understood that Power and Water has gone some way to addressing customers' concerns.

The Commission has been active in using – and intends to continue to use – its 'good offices' with all parties to facilitate supply being arranged on reasonable terms.

Market developments

Transmission Line proposal

In January 2006, the Commissioner met with proponents (including Powercor Australia) of the high voltage direct current transmission line to Mt Isa and possibly Darwin, in order to clarify regulatory impediments that they had raised to the transmission line's construction.

APPENDICES

1.	Background Information on the Commission	29
2.	Determinations and Approvals	33
3.	Publications	34
4.	Expenditures and Receipts.....	35
5.	Advisers to the Commission.....	36

APPENDIX 1

BACKGROUND INFORMATION ON THE COMMISSION

Establishment of the Commission

The Utilities Commission was established at the commencement of the *Utilities Commission Act* on 21 March 2000, and charged with administering economic regulation in nominated industries in the Northern Territory.

Independence and accountability of the Commission

While established as a separate administrative unit within the NT Treasury, the Commission 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* only defines the Commission's overall functions and powers. Specific responsibilities of the Commission with respect to a particular industry are 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*; and
- the *Electricity Networks (Third Party Access) Act*.

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 Supply and Sewerage Services Act*, 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 – located in the Department of Primary Industry, Fisheries and Mines – who has responsibility under the *Electricity Reform Act* for monitoring and enforcing safety standards, and for establishing and enforcing 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 *Utilities Commission 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 initially appointed Utilities Commissioner for a four year term commencing on 1 April 2000. On 1 April 2004, he was re-appointed for a further term of five years. In this role, he was during the year 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. During the year he also advised both the South Australian regulator (on gas access matters) and the Queensland regulator (on electricity matters).

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 while with the Commonwealth Treasury, he represented Australia at the International Monetary Fund in Washington DC. As an economic consultant from 1996, Mr Tregilgas undertook consultancy projects with government agencies in six Australian jurisdictions, including the Northern Territory.

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.

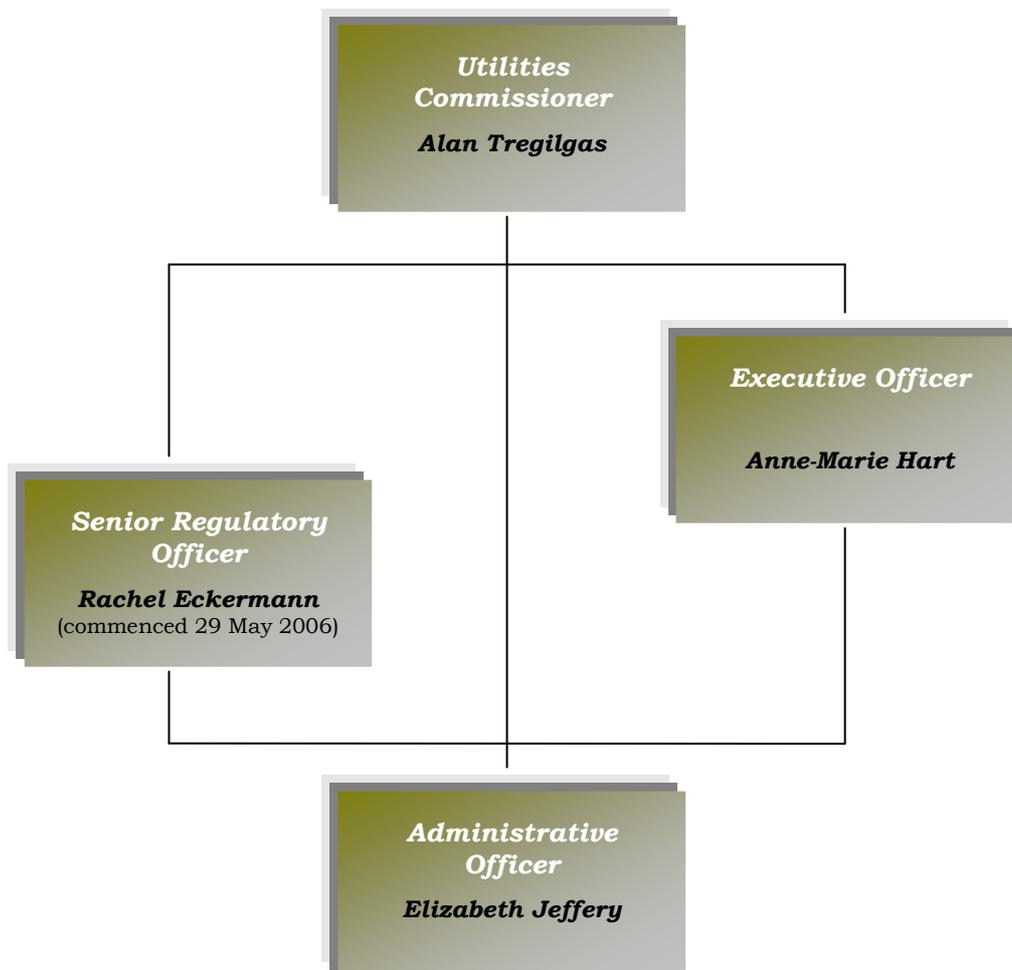
Commission staffing and resources

At 1 July 2005, two staff, employed within the meaning of the *Public Sector Employment and Management Act*, provided support to the Commissioner. In May 2006, the new position of Senior Regulatory Officer was filled.

The Commission's organisation chart at the end of the year is shown on the following page.

Organisational Chart

Utilities Commission of the Northern Territory as at 30 June 2006



Advisers to the Commission

The Commission also has access to expert technical advice, through the engagement of consultants as detailed in Appendix 5. Section 14 of the *Utilities Commission Act* authorises the Commission to engage consultants when it considers necessary and appropriate.

APPENDIX 2

DETERMINATIONS, APPROVALS AND INSTRUMENTS

Nature of decision	Type of decision	Effective period	Date of decision
Standards of Service Code	Code	until superceded	21 December 2005
Network Pricing Principles	Approval	to 30 June 2009	22 February 2006
Reversal of Contestability Guidelines	Instrument	until superceded	22 March 2006
Standards of Service Procedural Guidelines	Instrument	until superceded	22 March 2006
Accounting and Cost Allocation Procedures – Extension of Approval	Approval	until superceded	19 April 2006
Information Procedures – Extension of Approval	Approval	until superceded	19 April 2006
Energy Loss Factors Code	Code	until superceded	19 April 2006
Network Access Tariffs	Approval	1 July 2006 to 30 June 2007	31 May 2006

APPENDIX 3

PUBLICATIONS AND REPORTS

During 2005-06, the Commission published the following reports:

August 2005	<i>Draft Standards of Service Code</i>
September 2005	<i>NT Electricity Market: 2004-05</i>
September 2005	<i>Annual Report 2004-05</i>
December 2005	<i>Standards of Service Code – Statement of Reasons</i>
January 2006	<i>Regulatory Accounts for the year ended 30 June 2005</i>
January 2006	<i>2005 Annual Power System Review</i>
May 2006	<i>Network Tariffs 2006-07 – Commission Analysis</i>
June 2006	<i>Review of Cost Allocation Policies and Practices – Summary of Conclusions</i>

These publications can be viewed on the Commission's website: www.utilicom.nt.gov.au

In response to referrals from the Regulatory Minister in accordance with section 6(1)(g) of the *Utilities Commission Act*, the Commission also undertakes reviews for, and provides advice, to the Minister. Where required by the terms of reference issued by the Minister, the reports setting out the Commission's findings and recommendations remain confidential to government.

During 2005-06, the Commission provided the following report in confidence to the Minister:

- CSO Review (April 2006)

Section 6(b) of the *Electricity Reform Act* provides that the Commission also has the function of providing advice to the Regulatory Minister on the operation of the Act.

During 2005-06, the Commission provided no advice to the Minister.

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.

NORTHERN TERRITORY UTILITIES COMMISSION EXPENDITURE BY CATEGORY OF COST

Category of Cost	2004-05 \$000	2005-06 \$000
PERSONNEL COSTS	198.3	198.9
Salaries and related costs	183.0	184.5
Superannuation	15.3	14.4
OPERATIONAL EXPENDITURE	181.8	181.6
Consultants Fees	134.6	153.8
Official Duty Fares	28.8	18.5
Travelling Allowance and Accommodation	5.5	3.8
Other Plant & Equipment	1.2	2.7
Document Production	2.3	1.3
Motor Vehicle Expenses	1.6	0.5
Recruitment & Relocation Expenses	1.0	0.3
Memberships & Subscriptions; Freight; Library Services	0.8	0.3
Training & Study Expenses	5.2	0.2
Communications & IT Services	0.0	0.1
Office Req & Stationery	0.0	0.1
Advertising	0.8	0.0
Entertainment	0.0	0.0
OVERHEADS ALLOCATIONS	70.0	176.7^a
TOTAL EXPENDITURE	450.1	557.2

^a Increase in overhead allocation is due to increased staff numbers and a change in the method of calculation.

RECEIPTS BY ACCOUNT^b

Account	2004-05 \$000	2005-06 \$000
Fees and Charges	182.9	182.5
Licence Application Fees	1.0	0.0
Electricity Licence Fees	136.9	137.5
Water and Sewerage Licence Fees	45.0	45.0
TOTAL REVENUE	182.9	182.5

^b 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

ADVISERS TO THE COMMISSION

In 2005-06, the Commission used the services of the following consultants. The costs for the year totalled \$153,774. This compared with \$134,625 in the previous year.

Greater than \$50,000

East Cape Pty Ltd

During 2005-06, the Commission received advice from East Cape Pty Ltd in relation to the following matters:

- general contract support involving Mr Philip Theaker's temporary location in Darwin, with a focus on the oversight of Power and Water's wholesale electricity generation pricing, the provision of advice regarding the current (and prospective) effectiveness of the *Electricity Reform Act* and broad-based assistance to the Commission in carrying out its regulatory responsibilities; and
- advice in responding to the Government's review of regulatory arrangements in the NT electricity supply market.

Greater than \$10,000 and less than \$50,000

The Allen Consulting Group Pty Ltd

During 2005-06, the Commission received advice from the Allen Consulting Group Pty Ltd in relation to a review of Power and Water's cost allocation policies and practices.

Minter Ellison

During 2005-06, the Commission received advice from Minter Ellison in relation to the following matters:

- the appropriate legal or regulatory instruments for the establishment of alternative means of determining energy loss factors;
- issues arising on various matters in relation to ring-fencing; and
- the development of a Standards of Service Code.

Less than \$10,000

NIL