

Utilities Commission of the Northern Territory

REVERSAL OF CONTESTABILITY GUIDELINES

March 2006

Background

1. The purpose of these Guidelines is to set out the Commission's interpretation of:
 - (a) clause 6A of the Electricity Reform (Administration) Regulations regarding the revocation of a customer's status as a contestable customer; and
 - (b) clause 6C of the Electricity Reform (Administration) Regulations which sets out the basis of which the Commission may revoke a customer's status as a contestable customer.
2. In particular, these Guidelines are designed to articulate the principles that will underlie any declaration made by the Commission and to set out the processes the Commission will follow in deciding whether to revoke the classification of a customer as a contestable customer.
3. These guidelines are not intended to deal with the manner in which a relevant entity evaluates an application for reversal of contestability under section 6B of the Electricity Reform (Administration) Regulations or the process of cancelling a customer's certificate of contestability, as set out in Regulation 12A, once an application for revocation of contestability status has been approved.
4. These Guidelines apply irrespective of the private versus public sector ownership of the contestable customers involved.
5. An application for revocation of contestability status can be made by a contestable customer irrespective of whether they are subject to a grace period as set out in section 28(h) of the *Electricity Reform Act* and section 5 of the Electricity Reform (Administration) Regulations.

Authority for guidelines

6. These Guidelines are issued pursuant to Section 7 of the *Utilities Commission Act 2000*, which authorises the Commission to issue guidelines relating to the performance of its functions.
7. These Guidelines are intended to inform electricity entities and contestable customers of the Commission's position on certain matters that might be subject to a decision by the Commission.

Interpretation of key terms

8. Regulation 6A of the Electricity Reform (Administration) Regulations provides that:

"...a customer ceases to be classified as a contestable customer if the customer's consumption for the site to which the classification relates falls below, or never exceeds, the minimum consumption as specified in column 2 of the Schedule and the customer's consumption for the site is expected to remain below, or to not exceed, that level for the foreseeable future."

9. The Commission interprets **foreseeable future** to be a period of at least 12 months or such longer period as is deemed necessary, in the opinion of the Commission, to ensure that any seasonal variations in consumption are identified.
10. The Commission will accept **consumption forecasts** put forward by an applicant in support of their application for revocation of contestability status as valid where such forecasts have been certified in writing by the chief executive officer or such other officer as is designated as being generally accountable within the organisation for such forecasting.
11. Regulation 6C(2)(a) of the Electricity Reform (Administration) Regulations provides that the Utilities Commission may revoke the classification of the customer as a contestable customer –
- “(a) if the Utilities Commission is satisfied that –
- (i) regulation 6A applies to the customer; and
- (ii) the customer has not sought to contrive any reduction in consumption for the site to which the classification relates in order to seek revocation of the classification;“
12. The circumstances in which the Commission might consider that a reduction in consumption has been **contrived** would include, amongst other things:
- (a) where such forecasts do not underlie the organisation’s overall forward business plan (ie have been purpose-constructed for the application for revocation of contestability status); or
- (b) where an organisation carries on the same business but has changed name or ownership or changed its organisational structure in some other way such that historical consumption records under the previous name, ownership or business structure are not taken into consideration.
13. Regulation 6C(2)(b) provides that the Commission may revoke a customer’s classification as a contestable customer:
- “(b) for any reason, consistent with the objects of the Act, that the Utilities Commission thinks fit.”
14. The circumstances other than a reduction in consumption that the Commission might consider to be consistent with the objects of the *Electricity Reform Act* would include:
- (a) where the contestable customer site forms an integral part of the electricity system such that removal of that load from the system would compromise proper standards of safety, reliability and quality in the system as a whole; or
- (b) where the cost of maintaining proper standards of safety, reliability and quality in the system as a whole is greater than the cost revoking the contestability status of the customer; or
- (c) where the long term interests of consumers of electricity as a whole are served.
15. The Commission is strongly of the view that regulation 6C(2)(b) would apply very rarely and only in the most extraordinary of circumstances.

Process for applying to the Commission to review a decision by the relevant entity

16. The Commission will only consider undertaking a review in accordance with section 6C of the Regulations upon receipt of a written request from a customer.
17. This request should include the customer's rationale as to why their contestability status should be revoked, including any supporting documentation (eg correspondence from Power and Water, future load forecasts).
18. Within 3 days of receipt of the customer's request:
 - (a) the Commission will acknowledge receipt and advise whether any additional information is required; and
 - (b) the Commission will write to the relevant entity (Power and Water) advising them that the customer has sought a review of their decision and requesting that they provide (in writing) their rationale as to why the customer's contestability status should not be revoked, including any supporting documentation (eg correspondence with customer, historical usage records), with a response to be provided within 12 days.
19. At its discretion, the Commission may consider conducting private hearings with either or both parties.
20. Commercially sensitive information provided to the Commission will be subject to the Commission's obligation to preserve confidentiality as set out in section 26 of the *Utilities Commission Act*.
21. Within 30 days of receipt of the initial customer request for a review to be undertaken, the Commission will advise both the customer and Power and Water of its decision.

Utilities Commission
22 March 2006