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Ms Anne-Marie Hart
Executive Officer
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Dear Ms Hart

**RE: INQUIRY INTO THE TERRITORY'S ELECTRICITY NETWORK
ACCESS CODE - DRAFT REPORT**

I am writing to provide Treasury's response to the above draft report. Attachment A provides Treasury's comments on each of the Commission's recommendations.

Treasury notes that several recommendations contained in the report address problems identified with the *Electricity Networks (Third Party Access) Act* and therefore appear to be outside of the Commission's terms of reference for this review. While Treasury has commented on these issues in the attached response, it seems appropriate that they be provided separately, outside of the current review.

We would appreciate the Commission providing any legal advice it has obtained in regard to recommendations within the review.

If you require any further clarification, please contact Lawrence Irlam, Senior Research Officer, Economic Policy on telephone 8999 5378.

Yours sincerely

JENNIFER PRINCE
Under Treasurer

April 2003



**NT TREASURY RESPONSE TO UTILITIES COMMISSION DRAFT REPORT:
*Inquiry into the effectiveness of the NT Electricity Network Access Code***

Recommendation		Treasury response
1	The benefits possible warrant continuation of policy interventions aimed at facilitating third-party access to electricity networks, even in the Territory's circumstances.	Agree (as per our previous comments). However, due care is required that such interventions do not inappropriately disadvantage the incumbent network provider.
2	The Code is the most appropriate of policy instruments available for promoting third-party access to electricity networks in the Territory. A switching to alternative policy instruments would only increase costs for participants without guaranteeing improved outcomes.	Agree (as per our previous comments).
3	The Code's effectiveness can be improved by reducing administrative and compliance costs, and in providing greater certainty to the network provider, wherever this can be achieved without unduly impacting on the possible public benefits of access regulation.	Agree in principle.
4	The Code's effectiveness can be improved by reducing uncertainties and impediments facing access seekers and network users, wherever this can be achieved without unduly impacting on the possible public costs of access regulation.	Agree in principle. However, due care is required that such interventions do not inappropriately disadvantage the incumbent network provider.
5	The Act should allow interested parties to initiate consideration of amendments to the Code, consistent with the approach followed under the National Electricity Code.	At present there do not appear to be any legislative impediments for interested parties to initiate amendments to the Code.
6	A specific objects clause should be added to the Code, along the lines of the Commonwealth Government's proposed objects clause for Part IIIA of the <i>Trade Practices Act</i> .	Agree (as per our previous comments).
7	Clause 2(2) of the Code should be amended by substituting the word "must" in place of "should" and by adding to the list of matters "any other matters that the regulator considers are relevant", consistent with the wording in the National Gas Code.	Agree.
8	Provision should be made in the Act for the regulator to be	The Commission has not adequately justified its recommendation to make the Code

	<p>authorised to develop and publish “guidelines” and “directions” where the regulator can demonstrate:</p> <p>a) that this is necessary to eliminate any uncertainty that may arise regarding conduct of Code participants that is consistent with the requirements of the Code; and</p> <p>b) there is a net public benefit in promulgating such guidelines or directions.</p>	<p>generally more prescriptive. Other review mechanisms (that exist and are recommended, including a default access agreement) as well as the regulator’s current discretionary powers appear sufficient to deal with uncertainties as they arise. It is unclear that there is a need to provide the regulator with broader and largely unspecified regulatory powers.</p>
9	<p>Review and appeal provisions be retained in their current form.</p>	<p>Agree (as per our previous comments).</p>
10	<p>Ministerial discretion in determining which networks are covered by the Code should remain.</p>	<p>Agree (as per our previous comments).</p>
11	<p>Consideration should be given to including in section 5 of the Act the criteria that the Minister is to take in account in determining which networks are to be covered by the Code.</p>	<p>Agree. Specific criteria would reduce the uncertainty surrounding Ministerial discretion.</p>
12	<p>Section 11(1) of the Act should be amended to be consistent with section 8 of the <i>Utilities Commission Act</i>.</p>	<p>It is unclear whether any inconsistencies exist, although some definitional issues are apparent.</p>
13	<p>Section 26 of the Act should be amended to provide that no liability attaches to the regulator in relation to any act or omission under the Code, consistent with s41 of the <i>Utilities Commission Act</i> and s108 <i>Electricity Reform Act</i></p>	<p>Agree.</p>
14	<p>Section 26(2) of the Act should be amended to only operate to limit the network provider’s liability to the maximum extent permitted under the TPA.</p>	<p>If the TPA does not already override section 26(2), an amendment to this effect would be appropriate.</p>
15	<p>Section 26(2) of the Act should be amended to ensure that the network provider’s immunity from liability does not exclude the rights of redress that a party to an access agreement would usually have against the network provider for a breach of any access agreement.</p>	<p>Agree. Ensuring possible liability for breaching an access agreement would encourage compliance.</p>
16	<p>Section 26(1) of the Act should be amended to provide that no liability attaches to a person in relation to any system control type of act or omission under the Code</p>	<p>Agree.</p>
17	<p>Further consideration should be given to capping, rather than eliminating, liability of the provider and system controller</p>	<p>Agree. Capping rather than excluding liability would, to some extent, discourage non-compliance with the Code.</p>

	under sections 26(1) and 26(2).	
18	Clause 6A(2) of the Code should be amended to include a reference to such other information as required by the regulator from time to time	Agree. While the current wording is sufficiently broad to allow for additional information, it seems unlikely that the network provider would supply this without some explicit regulatory requirement.
19	Clause 8 of the Code should be amended to clearly state that the power to require information under this clause is in addition to the general information gathering power conferred upon the regulator under section 25 of the <i>Utilities Commission Act</i> .	It is unclear why such an amendment is necessary.
20	The Code should be amended to provide for the regulator's approval of a default end-of-system agreement and a demand connection agreement	Agree.
21	Clause 9 of the Code should be amended to provide for a general approval power, and a derogation or exemption power in favour of the regulator, in relation to the network technical code and the network planning criteria.	Agree that the discretion allowed by clause 30(3) may be excessive. Any derogation from the technical code should involve an application from the network provider and approval by the regulator.
22	Clause 9(5) of the Code should be amended to make it clear that the regulator's approval power under clause 9(4) extends to subsequent amendments proposed by the network provider.	Agree.
23	Clause 9 of the Code should be amended to confer a power on the regulator to initiate amendments to the network technical code and network planning criteria, including in response to suggestions by other Code participants.	Not agree. The Commission has provided little justification for extending the regulator's current powers beyond influencing the development of, as well as approving, the technical code and planning criteria.
24	A provision should be added to clause 9A of the Code recognising that any system for establishing a maximum price must also include a mechanism for defining the minimum service which must be provided in return for the payment of the maximum price	Agree that some minimum service standard should be formulated and applied in conjunction with the determination of reference tariffs.
25	Clause 11(2)(a) of the Code should be amended to allow an access seeker to seek the regulator's adjudication of what constitutes a reasonable timeframe for the making of the preliminary assessment, where the access seeker feels that the	Agree. Would provide the access seeker with some redress where it felt that the assessment of its application was being unnecessarily delayed.

	network provider's proposed timeframe is too long.	
26	In time, amendments may be required to clause 18 of the Code and the load balancing arrangements if a significant new generator was to emerge in the near future.	Agree.
27	The generation-related provisions of the Code should be retained in their present location.	Agree (as per our previous comments).
28	Clause 3 of the Code should be amended to ensure that different categories of network users (such as generators, retailers and end-use customers, and generator and load users) are appropriately defined in clause 3 of the Code and are then subsequently used in the Code in a consistent and correct manner.	Agree.
29	Further consideration should be given to whether the contractual framework to apply between the generator and the network provider and between the retailer, end-use customer and network provider under the Code should be in the form of the 'straight-line' arrangement as applying in New South Wales and Victoria or the 'triangular' arrangement as in South Australia.	Agree.
30	The Code should be amended to remove references to the possibility that no generators may contract for the direct delivery of electricity to end-use customers.	Agree. Generators should be allowed to contract directly with end-use customers providing existing licensing conditions are satisfied.
31	Clause 3 of the Code should be amended to ensure appropriate definitions are included for 'connection services', 'electricity network' and a 'consumer of electricity'.	Agree.
32	Clause 35 of the Code could be amended to allow any party to an access application to declare that a dispute exists by notifying the regulator (consistent with the process in the National Electricity Code).	This amendment does not appear necessary. While frivolous disputes may still be restricted under clause 38(2)(c), the recommended amendment would increase the ability for participants to prematurely declare disputes. If more flexibility in declaring such disputes is necessary, additional criteria could be added to clause 35.
33	Clause 38(2) of the Code should be amended to refer not only to the applicant, but also respondents.	Agree.
34	Clause 42(2) of the Code should be amended to remove reference to expansions of the electricity network in the	Agree that some definitional issue may exist between "extension" and "expansion".

	definition of ‘extension of an electricity network’.	
35	Clause 42(2) of the Code should be amended to ensure that an arbitrator will determine the economic feasibility of an extension of an electricity network in a manner that accords with the procedure applied by the regulator under chapter 8 of the Code.	Agree. The amendment would ensure that awarded capital contributions are consistent with those that are regulated more generally.
36	Clause 52(1) and 52(6) of the Code should be reconciled in order to ensure that an award which overrides an earlier award or access agreement with another party is clearly binding on that other party.	Agree.
37	The enforcement provisions in section 19 of the Act should be retained in their present form	Agree (as per our previous comments).
38	The Act should be amended to allow, in certain circumstances, a direct right to claim compensation for a contravention of the Code, consistent with provisions of the National Gas Code.	Agree. Direct rights to compensation should be transferred from the regulator to participants where breach of the Code also involves an obligation between the participants.
39	Clause 7A of the Code should be revised to remove any anomalies with the Regulation under the <i>Utilities Commission Act</i> , which authorises the Electricity Ring Fencing Code.	Agree that there may be problems in the application of clause 7A, although it is not clear that any anomalies exist between this clause and the <i>Utilities Commission Act</i> .
40	Further consideration should be given to the arrangement applying in clause 18 of the Code for assigning available network capacity between competing access applications.	Agree that the current wording does not ensure appropriate allocation of spare capacity (may be related to the problems addressed by recommendation 26).
41	Further consideration should be given to clarifying the rights of network users under existing access agreements as currently defined in chapter 2 of the Code.	Agree that there is some ambiguity regarding existing access rights.
42	Clause 19(3) of the Code should be amended to provide for the regulator to have a role in establishing the circumstances in which a financial guarantee should be applied (and the terms relating to the provision of that financial guarantee).	Not agree. The decision to require the payment of a financial guarantee should be left to the network provider. While this discretion could potentially provide a basis for competitive neutrality complaints, Treasury is of the view that a complaint on these grounds could not be sustained.
43	Clause 3 (and associated clauses) of the Code should be amended to address the definitional anomalies identified by the Commission’s legal advisers.	Agree that some definitional problems exist.

44	Part 2 of the Code should be amended to address the drafting anomalies identified by the Commission's legal advisers.	Agree that some of the clauses identified could be more specific and consistent.
45	The network price control framework provided for in Part 3 of the Code – involving an independent regulator – should be retained.	Agree (as per our previous comments).
46	Clause 63 of the Code should be amended to include an additional paragraph referring to such other outcomes as the regulator determines are consistent with the general objects of the Code.	Agree.
47	Clause 63 of the Code should be amended to explicitly include in the pricing principles that long-run costs of providing access should be taken into account, consistent with the Commonwealth Government's response to the Productivity Commission Review.	Agree (as per our previous comments).
48	Chapter 5 of the Code should be amended to address the definitional anomalies identified by the Commission's legal advisers.	Agree that there is some ambiguity in the definition of "regulated network access services" and the "network" in clauses 60 and 61(1)(b).
49	Clause 72(2)(b) of the Code should be amended to provide for a class of 'excluded services' that, because in the regulator's opinion such services are both not subject to effective competition and do not lend themselves to be regulated via the general price controls provided for in chapters 6 and 7 of the Code, are to be provided to network users on fair and reasonable terms as approved by the regulator.	It is not clear from the Commission's discussion what specific services would be classified among a "third class" of services, and why these could not be subject to price controls or excluded altogether. It is also not clear that providing the regulator with discretion in identifying and regulating these particular services would add certainty for market participants.
50	The definition of 'regulatory control period' in clause 3 of the Code should be amended to remove any doubt that such periods in future are to be five years in length.	Agree.
51	Part 3 of the Code (and associated Schedules) should be amended where applicable to remove any doubt that the price control methodology to be used in the second and subsequent regulatory periods is to be determined by the regulator, in consultation with interested parties, in accordance with	Agree that there is some ambiguity in schedule 9 (especially clause 1A) regarding the development of the revenue cap methodology.

	generally accepted regulatory best practice current at the time.	
52	Consideration should be given to deleting – at the appropriate time – those sections of Part 3 of the Code that refer exclusively to the price control methodology to be used in the first regulatory period.	Agree that redundant sections could be removed.
53	Clause 67(2) of the Code should be deleted to address the definitional anomalies identified by the Commission’s legal advisers.	Agree that a definitional problem exists regarding network access services (also in conjunction with recommendation 48).
54	The objectives of network pricing stated in clause 74 of the Code should be retained in their present form.	Agree (as per our previous comments).
55	Clause 74 of the Code should be amended to provide that, in the event of any conflict with the clause 63 pricing principles, the clause 63 principles will prevail.	Agree.
56	The network pricing structure provisions in clause 75 of the Code should be retained in their present form.	Agree.
57	Chapter 7 of the Code should be amended to require that the network provider make arrangements with the retailer to include the network component of a contestable customer’s bill in the statement of charges provided to each contestable customer.	Agree.
58	The pricing principles statement provision in clause 78(1) of the Code should be retained in its present form.	Agree (as per our previous comments).
59	The capital contributions provisions in chapter 8 of the Code should be retained in their present general form.	Agree (as per our previous comments).
60	Chapter 8 of the Code should be amended where applicable to address the definitional and drafting anomalies identified by the Commission’s legal advisers.	<p>Agree that there is some overlap between clause 31 and chapter 8.</p> <p>The Commission has not provided sufficient justification that the Code’s effectiveness would be improved by providing the regulator with further discretion under clause 81. The regulator’s current approval and application powers seem appropriate, and any advice provided by the regulator regarding capital contributions would seem to inappropriately advantage the access seeker.</p>

ATTACHMENT A

		Also, aside from not making a specific recommendation, the Commission has not adequately explained how clause 79(5) would expose network users to potentially onerous requirements, particularly where the prudential requirements covered by this clause are subject to negotiation between market participants.
61	The out-of-balance energy charging provisions of chapter 9 of the Code should be retained in their present form.	Agree (as per our previous comments).
62	The provision for the regulator's determination of the methodology for estimating network energy losses in clause 82(2A)(b) of the Code should be retained in its present form.	Agree.