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Ms Anne-Marie Hart  
 Executive Officer  
 Utilities Commission  
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*Rec'd 11/3.*

*Anne Marie*  
 Dear Ms Hart

**RE: NETWORK ACCESS CODE - ISSUES PAPER**

I am writing to provide Treasury's response to the above issues paper.

While it is acknowledged that experience with the Code has been limited, the review offers an opportunity to improve the regime in light of experience with access regimes interstate and the review conducted by the Productivity Commission and subsequent analysis by the Commonwealth.

The Code may also benefit from changes relating to considerations of simulation of competition given the lack of competition at generator/retailer level due to current unavailability of gas outside of existing contracts.

To this end any amendments to the Code should take into consideration recommendations by the Productivity Commission in respect of clarifying objectives, pricing principles, increasing certainty and ensuring an appropriate balance between investors and those seeking access.

Attachment A provides Treasury's comments on specific questions asked in the issues paper.

If you require any further clarification, please contact Bruce Michael, Assistant Director, Economic Policy on telephone 8999 6398.

Yours sincerely

*Jennifer Prince*

JENNIFER PRINCE  
 Under Treasurer

*7* March 2003



**NT TREASURY RESPONSE TO UTILITIES COMMISSION ISSUES PAPER:  
*Reviewing the NT's Electricity Networks (Third Party Access) Code***

<b>Issue</b>		<b>Treasury response</b>
1	Commission's interpretation of the Terms of reference.	Agree with Commission's interpretation. Note that substantial changes may not materially affect effectiveness of regime.
2	Evidence of exercise of market power by network operator.	Care should be taken in interpretation of behaviour prior to introduction of the access regime given that such behaviour may have been within the regulatory boundaries of the day.
3	Scope of other reforms to address access problems.	The Code is the appropriate instrument to regulate network access issues.
4	Significance of the potential costs of access regulation in the Territory.	Costs related to compliance and enforcement are unlikely to be avoided as market failure in the provision of network infrastructure services is well recognised. As the Commission notes, many costs associated with access regulation relate to "getting it wrong". Without sufficient experience in the Code's use, and data on associated impacts, the costs associated with regulatory failure are difficult to estimate. To the extent that the Territory's networks are not nationally significant, unnecessary costs may be accruing to the network provider and the Territory Government.
5	Are there views as to the cost-benefit balance regarding access regulation in the Territory's case?	It seems prudent that judgement on the net cost of the Code be reserved until competition becomes a reality. While costs associated with the administration and review of the Code may exist at present, offsetting benefits might be realised in the future.
6	Should provision be made for regular reviews of the Code (say prior to the commencement of each regulatory period)?	The Code currently allows for review at any time, however provision for review of the Code prior to the commencement of each regulatory period is supported.
7	Is there a role in the Territory for a change in the balance between access regulation and other policy instruments available for promoting efficient access to essential electricity infrastructure?	The alternative forms of regulation suggested by the Commission, while potentially achieving the same outcome, appear more costly and on their own lack the coverage of specific access regulation.
8	Is there a need to include a specific objects clause in the Code?	Introduction of an objects clause could only enhance the Code by providing more clarity for market participants and increased guidance and accountability for market participants. The Commonwealth's proposed objects clause, in response to the Productivity Commission report, is supported in this regard:

		<p>“a) promote the economically efficient operation and use of, and investment in, essential infrastructure services, thereby promoting effective competition in upstream and downstream markets; and</p> <p>b) provide a framework and guiding principles to encourage a consistent approach to access regulation in each industry.”</p>
9	If a specific objects clause were to be included in the Code, would sufficient overall guidance be provide to the Commission by use of the Productivity Commission’s proposal that the objects of access regulation are “to promote the economically efficient use of, and investment in, essential infrastructure services.” What alternative/additional objectives might be preferred?	It would seem appropriate to use all of the Commonwealth’s words in the suggested objects clause.
10	To what extent should the Code leave matters of implementation or detail to the parties and/or the Commission? Should the Code be more or less prescriptive?	As far as possible the Code should leave matters of access to be decided between market participants. Considerable guidance is contained in the Code to facilitate access arrangements either by agreement or regulatory intervention. On this basis, no changes seem needed.
11	Is there a need to increase the grounds for review of regulatory decisions beyond just ‘bias’ or ‘errors of fact or interpretation’?	The grounds for appeal appear appropriate. In practice regulatory decisions are issued in draft form which allows parties to identify issues such as bias and errors of fact or interpretation prior to a final decision being made by the regulator.
12	Should the Code provide the criteria upon which the Minister is to determine which networks are to be covered and which are not?	Criteria which a Minister should take into account in determining which networks are to be covered may be appropriate. However due to the unique characteristics of the Territory, Ministerial discretion in determining coverage remains appropriate.
13	What modifications are needed to the Code before coverage could be extended beyond government-owned networks?	The Commission should consider modifications to the Code to provide sufficient incentive for new investment, including provisions for access holidays and truncation premiums (see chapter 11 of Productivity Commission report on the National Access Regime)
14	Is the Code specific enough about the information to be provide by a network provider to access seekers?	No changes seem needed.
15	Should the nature of (internal) access arrangements between PowerWater Retail/Generation and PowerWater Networks be subject to greater prescription under the Code?	No. Ring-fencing arrangements are appropriately addressed through the Ring Fencing Code.
16	Are the technical code and planning criteria requirements in	The requirements seem justified in the public interest as they ensure service quality and

	the Code too onerous? Have they served as a barrier to entry?	safety. Treasury is not aware of any evidence that these requirements have acted as a barrier to entry.
17	How appropriate are the Code's timeframes in which information and responses are to be provided between access seeker and network provider?	Treasury is not aware of any problems arising from the specified timeframes.
18	Can the Code's negotiation framework accommodate likely future changes in the Territory's electricity supply industry (considering the potential availability of off-shore gas as a fuel)?	The Code's negotiation framework should anticipate future changes in the Territory's electricity supply industry.
19	Has there been any evidence of attempts to frustrate access through technical barriers and the like?	Treasury is not aware of such evidence.
20	Should the generation-related provisions of the Code be removed to a more appropriate vehicle? What might be the more appropriate locations of such provisions?	No change is suggested.
21	Should the overlapping definitions of network 'users' be removed? Alternatively, should a clearer distinction be made between generators and retailers/end-use customers?	To the extent that problems have emerged with existing definitions.
22	Is there sufficient certainty as to the conditions to be met before an access dispute can be declared? Should the Code be amended to be more prescriptive in this regard?	Provisions of the Code essentially state that an access dispute arises where commercial negotiations fail, or are overly protracted. The applicant is able to notify the regulator that they do not wish the dispute to proceed to arbitration. Some uncertainty exists over what "good faith negotiations" entail. Recent court decisions have interpreted the meaning of "good faith" in a way that conflicts with commercial objectives. On this basis, these words should be deleted. Similarly the regulator's assessment of a "reasonable prospect of reaching agreement" and the applicant's "reasonable attempts to reach agreement" are vague. However, further prescription of these terms may impose unnecessary restraints in negotiations without any foreseeable benefits.
23	Should the role of the Commission be more explicit under the Code with regard to the dispute resolution process?	The role of the regulator is quite intrusive through the dispute resolution process and is adequately provided for in the Code.
24	Are the Act's enforcement provisions strong enough to ensure compliance with the Code?	The enforcement provisions appear appropriate.
25	Does the fact that the network provider is fully government owned provide sufficient surety that prices will not be	Government ownership should not be a consideration. Arms length price control is supported. An obligation to provide access in the absence of price controls leaves the

	excessive, or does arm's length price control remain necessary?	network provider to operate above appropriate levels. The reference tariff and revenue cap should be high enough to allow the network provider to achieve appropriate returns.
26	Are the objectives of price regulation set out in the Code appropriate? Are they detailed enough, or too detailed?	<p>The pricing principles contained in the Commonwealth's response to the Productivity Commission's report on the National Access Regime may improve on those already in the code, with modification to explicitly take long-run costs of providing access into account. These are:</p> <p>a) that regulated access prices should:</p> <p>(i) be set so as to generate expected revenue for a regulated service or services that is at least sufficient to meet the efficient <b>long-run</b> costs of providing access to the regulated service or services; and include a return on investment commensurate with the regulatory and commercial risks involved.</p> <p>(b) that the access price structures should:</p> <p>(i) allow multi-part pricing and price discrimination when it aids efficiency; and</p> <p>(ii) not allow a vertically integrated access provider to set terms and conditions that discriminate in favour of its downstream operations, except to the extent that the cost of providing access to other operators is higher.</p> <p>(c) that access pricing regimes should provide incentives to reduce costs or otherwise improve productivity.'</p>
27	Should the Code's pricing principles provide guidance as to the relative weights to be accorded to what can often be conflicting objectives?	The use of judgement is preferable provided justification is made for adopted weightings.
28	Should the Code give more or less guidance on the different types of 'excluded (from the revenue cap) services'?	No change is suggested.
29	Should regulatory periods in future be five years? Or shorter? Or longer?	Five years appears to be an appropriate time frame for regulatory reviews at the current time. There appears to be no adequate basis to shorten or lengthen the timeframe at present.
30	The Code seems to lock in price regulation based on the building blocks approach, to the exclusion of alternative	Consideration of a total factor productivity measure appears appropriate in addition to regulation based on the building blocks approach based on the objectives of mimicking

	approaches. Should the Code's reliance on a building blocks approach be relaxed? What role could greater emphasis upon a productivity –based approach play?	competition and reduction in regulatory costs.
31	If the Code is to be relaxed in this regard, should the Code make the call regarding the choice among alternative approaches, or should this be a matter left to be determined among the parties concerned?	It seems more appropriate that the regulator determine the relative importance and form of various efficiency and productivity measures that are used in the regulation of network prices.
32	Are there any conflicts between the clause 74 objectives and the chapter 5 pricing principles?	The differences reflect the objectives to be followed by the regulator and network provider and do not appear to be inconsistent.
33	Is one bundled tariff for regulated network services (as applied in the first regulatory period) sufficient to provide appropriate price signals to the market? Should unbundled charges be mandated by the Code?	The flexibility allowed in the Code appears appropriate.
34	Was the pricing principles statement approved by the Commission for use in the first regulatory period sufficient in all regards? Should the provisions relating to this statement in the Code be made more or less prescriptive?	The statement approved by the Commission appears to adequately list broad pricing principles and structures that would be expected of a network provider in setting reference tariffs, including margins for investment returns as allowed under the revenue cap. The information in the statement appears to exceed the provider's obligation under clause 74.
35	Should the Code's provisions relating to capital contribution be more or less prescriptive?	The provisions appear adequate. There is sufficient provision for capital costs not only to be recovered from the access seeker, but also to apportion them to various other parties according to expected benefits from the additional network investment. Calculation of contributions to be paid by an access seeker will depend on specific nature of the network investment and its future usage and the provisions should be accordingly flexible to account for these specifics.
36	Should the Code's provisions relating to system imbalance pricing be more or less prescriptive?	The current provisions appear adequate.
37	Should the generation-related provisions of chapter 9 of the Code be removed to a more appropriate vehicle?	No changes are suggested.
38	Should the Code contain more direction on the calculation of energy loss factors? Should the Commission be obliged to determine a means of calculating these factors alternative to that in Schedule 13.	Calculation of the energy loss factor on a marginal loss basis appears appropriate.

