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29 November 2021

Mr Mark Feather
General Manager, Consumers and Markets
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Dear Mr Feather

Power and Water Corporation Ring Fencing Compliance – request for waiver

Thank you for your letter dated 30 September 2021 responding to our request for clarification on submitting a waiver application or letter of no action to address areas of the Ring-Fencing Guideline (**Guideline**) we identify as being practically difficult to achieve full compliance with.

As a result of discussions with AER staff and the above-mentioned correspondence, Power and Water requests a waiver from the following three clauses of the Guideline:

- 4.2.4 – publication of office and staff register;
- 4.4.1(a) – confidential information protection in new agreements (as far as it relates to contracts which may be renewed or varied – we have already developed these clauses for new agreements); and
- 6.2.3 (a new clause under version 3 of the Guidelines) relating to the requirement for a distribution network service provider to maintain and keep a register of regulated stand-alone power systems.

Our substantive application in support of our waiver request is contained at Attachment A.

To provide the AER with further assurance over our commitment to enhancing our compliance with the Guideline we have also consolidated a list of compliance actions and next steps, which is included in Attachment B. With particular reference to Attachment B, we draw your attention to our intended approach for addressing issues associated with achieving full compliance with information access and disclosure requirements. Given limitations with our current ICT systems, we will seek to meet our obligations under the Guideline by submitting a broad information request for access to ring-fenced information currently shared with parts of our business that are treated as a related electricity service provider (**RESP**) under the Guideline. A high-level description of this information will be published on our Information Register.

If you would like any clarification regarding our response, please contact Brendon Crown, Senior Manager Regulation, Economics and Pricing– by phone on 0438 579 783 or by email Brendon.crown@powerwater.com.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jodi Triggs'.

Jodi Triggs
Executive General Manager
Customer Strategy and Regulation

Submission in Support of Ring-Fencing Guideline Waiver Application



Version 1
D2021/493967



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1. Introduction

a) Overview

Power and Water Corporation (**PWC**) is a multi-utility that provides a broad range of essential services (including gas, water, sewerage, and electricity) to Territorians across the Northern Territory (**NT**). In addition to providing a range of essential services, PWC is also the System Controller and Market Operator for the Northern Territory Electricity Market (**NTEM**).

Consequently, it is important to note that the conveyance of electricity is just *one* of the essential services that PWC provides. Despite providing a broad range of services, for the most part, the services that we provide are non-contestable and governed by a range of statutory and licence requirements.

For example, while PWC owns and operates a number of electricity networks not subject to Australian Energy Regulator (**AER**) oversight, the costs of providing these services are recovered via a grant from the Department of Housing or directly from retailers. These services are provided by PWC under an agreement with the Northern Territory Government. This arrangement is in place due to a lack of service providers willing to provide these services to remote communities and other geographic dispersed locations outside of the Northern Territory's main urban areas.

Our three largest electricity networks (Darwin-Katherine, Alice Springs, and Tennant Creek systems) are subject to economic regulation under the National Electricity Rules (**NER**), and as such as subject to the AER's Ring-Fencing Guideline (**Guideline**).

While ring-fencing applies to PWC its application has been modified by clause 6.17.1B of the Northern Territory National Electricity Rules (**NT NER**) to reflect operating circumstances in the NT, which differ substantially to other states and jurisdictions. Specifically under the NT modified Guideline, restrictions relating to legal separation, physical separation, and staff sharing and cross promotion do not apply.

However, despite these modifications PWC has identified a number of areas where meeting its obligations under the Guideline are practically difficult to achieve or where compliance is likely to impose additional costs on PWC without any corresponding benefit to customers. To address these issues and promote outcomes more consistent with the achievement of the National Electricity Objective (**NEO**) PWC is seeking a waiver from the following obligations under the Guideline:

- **Clause 4.2.4 - requirement to maintain an office and staff registers:** PWC is not subject to office or staff sharing restrictions under the NT modified Guideline. This waiver would address this inconsistency.
- **Clause 4.4.1(a) - conduct of service providers:** Due to the complexity in how ring-fencing applies to PWC additional time is sought to allow PWC to implement grandfathering arrangements for the treatment of existing contracts subject to renewal or variation.
- **Clause 6.2.3 regulated stand-alone power systems reporting requirements** – this is a new requirement imposed under version 3 of the Guideline. PWC is not subject to the same legal separation restrictions around stand-alone power system (SAPS) ownership and consider that it would be onerous to require PWC to report detailed information where no restrictions apply.

These issues have been raised both formally and informally with the AER, with the AER indicating in its correspondence to PWC on 30 September 2021 that it would be appropriate to apply for a waiver for clauses 4.2.4 and 4.4.1(a). We have expanded our waiver application to also include a request in relation to clause 6.2.3, to resolve an inconsistency with the provision already derogated (clause 3.1), which is the same logic for applying for a waiver request for clause 4.2.4.



PWC does not envisage that there would be any competition impacts (real or perceived) in granting these waivers, as we are not seeking to use this waiver to compete with other service providers. Rather, our intention for seeking a waiver is to allow us to adopt a more pragmatic approach towards compliance that better achieves the policy objectives of the Guideline. We believe granting our waiver request will deliver cost savings to customers by reducing the need to comply with obligations which are not relevant, given modifications under clause 6.17.1B of the NT NER and it therefore promotes outcomes consistent with the achievement of the NEO. The absence of a waiver would result in Power and Water incurring additional cost to establish a workable arrangement for the application of the clauses, develop appropriate systems processes and controls in order to meet the required standard of compliance.

Clause 5 of the Guideline allows distribution network service providers (**DNSPs**) to apply to the AER for a waiver from complying with specific obligations under the Guideline. This is in recognition that in some circumstances compliance may impose more costs than benefits for consumers, and in these cases, it may not be in customers' long-term interests to require the DNSP to comply with this obligation.

As required by clause 5.2 of the Guideline, this document sets out:

- a. the obligations in respect of which PWC is applying for a waiver
- b. the reasons PWC is applying for a waiver
- c. the details of the services in relation to which PWC is applying for a waiver
- d. the proposed commencement and expiry dates of the waiver, including the reasons for those dates
- e. the costs associated with PWC complying with the relevant obligation if the waiver were to be refused
- f. the regulatory control period to which the waiver would apply
- g. additional measures PWC proposes to undertake if the waiver were granted
- h. the reasons PWC considers the waiver should be granted.

We note that the AER released a version 3 of the Guideline on 3 November 2021 and we have prepared the waiver application on the basis of version 3, including that one of our waivers relates to a new clause.



2. Details of waiver application

a) Obligations sought to be waived

Clause 4.2.4 – publication of office and staff register

PWC is seeking a waiver of the obligations under section 4.2.4 of the Guideline. Office, staff, branding and promotion restrictions do not apply under the NT modified version of the Guideline, which is why PWC is seeking a waiver from having to publish and maintain office and staff registers on its website.

In response to the request, AER advised PWC on 30 September 2021 that:

“4.2.4 Registers Office, staff, branding, and promotions do not apply under the Northern Territory (NT) modified version of the Guideline. Consequently, Power and Water is seeking a waiver from having to publish and maintain office and staff registers on its website.

A waiver application is the most appropriate course of action. Power and Water should submit a publishable waiver notice/letter to the AER with a request for a waiver. We will then begin the waiver assessment process. Timing: As soon as possible or by 31 December 2021.”

Clause 4.4.1(a) – Conduct of Service Providers

PWC is seeking a waiver of the obligations under section 4.4.1(a) of the Guideline to allow greater time to develop pragmatic grandfathering arrangements for treating existing contracts subject to renewals or variations. PWC has undertaken a comprehensive review of its existing contracts and has identified 305 out of 738 agreements impacted by ring-fencing, and have identified 113 agreements which are close to approaching variation or extension. We have looked at four different potential compliance approaches for meeting our obligation under 4.4.1(a) but need additional time to implement and communicate with our impacted suppliers.

In response to the initial request, AER advised PWC that:

“We agree with Power and Water that a waiver application is the best course of action, to provide time to develop and implement a longer term approach for existing contracts.

We note that it is likely that any waiver granted would be for contracts in force as of the date of the waiver notice. Any new contracts will need to comply with the guideline provision.”

We have already developed appropriate ring-fencing clauses to be included in all new contracts with service providers from 1 July 2021. The waiver would solely apply to existing contracts which may be subject to renewal or variation during the requested waiver period to 31 December 2022.

Clause 6.2.3 Regulated stand-alone power systems reporting

PWC is seeking a waiver to the new obligation to maintain and publish a register for SAPS given that primary obligations in relation to SAPS is imposed under clause 3.1 which does not apply under the NT modified Guideline. We believe complying with reporting requirements under these circumstances would result in additional compliance costs and would deliver no associated benefit to customers given that there are no restrictions in the NT regarding SAPS ownership.



b) Reasons for application

PWC is seeking a waiver from these three obligations based on the reasoning set out in sections 2.e [cost of compliance] and 2.h [benefits to the consumer] of this application:

- PWC would incur additional costs if it was required to comply with obligations, which would ultimately be passed on to customers without delivering any corresponding benefit;
- Granting of the waivers will not result in any adverse impact on market competition (real or perceived) and would not give rise to increased risk of cross-subsidisation or discrimination; and
- Would promote outcomes more consistent with the achievement of the NEO.

c) Services in relation to which PWC is seeking a waiver

PWC is seeking a waiver from clauses **4.2.4**, **4.4.1(a)** and **6.2.3** in respect of activities and services provided by its three regulated electricity networks (i.e. broad waiver).

d) Proposed commencement and expiry dates of waiver

We propose that the waivers commence as soon as possible, and that:

- The waiver for **4.2.4** [publication of staff and property register] is required due to the operation of the clause 6.17.1B of the NT NER which includes a derogation from the general ring-fencing requirements relating to offices, staff, branding and promotions. Noting that a waiver cannot be granted without an expiry, we seek this waiver to apply for the remainder of the current regulatory control period, **being until 30 June 2024**.
- The waiver for **4.4.1(a)** [service provider compliance with guideline clauses] is requested to **31 December 2022** and is only requested to apply to contracts which are approaching renewal or variation at the time of submitting this waiver request. This would allow additional time for PWC to implement grandfathering arrangements for existing contracts approaching renewal or variation. All new contracts entered into from 1 July 2021 already contain appropriate ring-fencing clauses, information sheets have been prepared for service providers and relevant procurement procedures and processes have been updated.
- The waiver for clause **6.2.3** is also required due to a provision which has been derogated (3.1 vii and viii). Noting that a waiver cannot be granted without an expiry, we seek this waiver to apply for the remainder of the current regulatory control period, **being until 30 June 2024**.

e) Cost of compliance with relevant obligations

In relation to the waiver for compliance with 4.2.4 of the Guideline, Power and Water is not currently required to comply with the requirements of clause 4.2 which relates to physical separation, staff sharing, branding and cross promotion. Compliance with this obligation would result in an inefficient use of resources, as restrictions around physical separation and staff sharing do not apply and would not deliver any customer benefits. Compliance with this obligation would also be costly and difficult as our operating model structures our service delivery around 'like' functions rather than separate lines of business to remove duplication and capture efficiencies in scope.

In relation to the obligation under **4.4.1(a)**, more time is required to develop a 'fit-for-purpose' approach for grandfathering existing contracts subject to renewal or variation. PWC considers that it is prudent to develop a pragmatic approach for managing these legacy issues in a manner which avoids and/or mitigates the need for legal review and advice on individual contracts or categories of contracts. This could result in significant costs for PWC given the volume of contracts (113) likely to be impacted.



The requirement to maintain a register and report SAPS under clause 6.2.3 is likely to impose unnecessary costs on the PWC and result in an inefficient allocation of resources given that restrictions on DNSP SAPS ownership imposed under clause 3.1 do not apply under the NT modified version of the Guideline.

f) Regulatory control period for waiver

The waiver application for clause 4.2.4 and 6.2.3 is sought until the end of the current regulatory control period, being 30 June 2024, while the period for the waiver for clause 4.4.1(a) is requested until 31 December 2022.

g) Additional measures PWC proposes to undertake

In its 30 September 2021 letter, the AER has also noted that PWC will need to establish and publish an **information sharing protocol** under clause 4.3.4(d) of the Guideline. At the time of submitting our annual compliance report PWC has published and maintains an information sharing protocol on our website. The challenge that PWC faces in demonstrating its compliance with this obligation stems from the definition of ‘contestable electricity services’ under the Guideline which treats services provided by PWC as contestable even where no competitive market exists and results in parts of PWC’s business being classed as a ‘related electricity service provider’ (**RESP**) under the Guideline.

PWC has undertaken analysis to identify the parts of its business, as a result of our operating model, which are likely to be treated as a RESP or part RESP under the Guideline and therefore subject to ring-fencing restrictions. To enhance our compliance with information sharing requirements under the Guideline we have developed an internal RESP information request procedure and is in the process of doing an internal information request to assess information flows that might be captured by the definition of ‘ring-fenced’ information and will update our information register to provide greater transparency on the nature of ‘ring-fenced’ information shared parts of our business deemed to be a RESP.

PWC is also in the midst of implementing significant transformational change and over the coming years will be looking to implement a number of new systems which will address current limitations with existing ICT systems and will help to alleviate the level of manual compliance required to meet our obligations under the Guideline.

While actions relating to the implementation of new systems or transformational initiatives are likely not to be completed until July 2023, we have sought to mitigate the potential for adverse compliance impacts from these delays by focusing on addressing high risk exposures and priorities by first establishing a more robust preventative control landscape, followed by enhancing detective and corrective controls. Ring-fencing requirements have been captured and incorporated into specifications for PWC’s new Health Environment Risk and Compliance system, metering and billing system (Meter to Cash Project), and market settlement system (Market Interactions Enablement Project). In addition, we have:

- updated the terms and conditions of our contract suite to reflect ring-fencing requirements;
- updated a number of internal processes and procedures to better reflect Guideline requirements;
- developed guidance materials, Frequently Asked Questions (**FAQ**) Fact Sheets, and tailored training to help uplift our staff’s understanding and awareness of ring-fencing requirements;
- developed an information sheet for external service providers on Guideline requirements; and
- established a dedicated internal intranet page on ring-fencing to provide a central location where staff can easily find information and supporting materials on ring-fencing to enhance their understanding.



h) Benefits to the consumers of the waiver

The objective of the Guideline is to promote the NEO by providing for the accounting and functional separation of the provision of direct control services by DNSPs from the provision of other distribution services and other services by them, or their affiliated entities, and to promote competition in the provision of electricity services. However, clause 5 of the Guideline recognises that it may be appropriate to waive a DNSP's obligation to comply with some parts of the Guideline in cases where this compliance would not be in customers' long-term interests, consistent with the NEO.

In general, customers' long-term interests are likely to be best served by competitive markets, where there is the potential for effective competition to exist. The two requirements from which we are seeking a waiver don't touch on competition issues, but are rather related to ensuring consistency and efficient transition to the new requirements.

We consider that there is negligible benefit in complying with these two requirements at this point in time, and that the costs of PWC complying with these obligations in relation to our services would outweigh any benefits to our electricity customers. We therefore consider that waiving these obligations would be consistent with the NEO.

3. Glossary

Abbreviation / Term	Full text / description
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
CAM	Cost Allocation Methodology
PWC Current Regulatory Period	1 July 2019 to 30 June 2024
DNSP	Distribution Network Service Provider
AER Ring-fencing Guideline	Electricity Distribution Ring-fencing Guideline [date]
PWC	Power and Water Corporation
NEO	National Electricity Objective
NER	National Electricity Rules
Other distribution services	Distribution services other than direct control services
RESP	Related Electricity Service Provider