



Attachment 6.1: Nominated cost pass through event - NTEM Priority Reform Restructure Event

Nominated cost pass through event -
NTEM Priority Reform Restructure Event

PowerWater

15 April 2024

1. Background

On 12 June 2020, the NT Government announced the Northern Territory Electricity Market (NTEM) Priority Reform Program to:

- Improve coordination of solar and gas-fired generators.
- Ensure there is sufficient generation capacity available to meet consumers' needs.
- Facilitate payments between retailers and generators.
- Improve the efficiency of the provision of essential power system security services.

The reform program included the release of a series of draft position and consultation papers in January 2021 relating to dispatch and settlement, essential system services and the design of a capacity mechanism.

In September 2021, the Northern Territory (NT) Government introduced a *Ministerial Code Making Power* to enable the Minister to directly initiate and implement strategic energy policy reform where changes to the *System Control Technical Code*, *Network Technical Code* and Planning Criteria are required.

Since that time, the NT Government commissioned the *Gateway Review* which resulted in the Gateway Review Report. One of the recommendations of that report was the separation of Northern Territory Electricity System and Market Operator (NTESMO) from the current Power and Water corporate structure.

We understand that the recommendation to separate NTESMO from Power and Water has been considered by the NT Government and is scheduled for consideration and decision by Cabinet, however a decision has not yet been made. If NTESMO is separated from the Power and Water corporate structure, our cost of providing direct control services would likely increase. This expectation is based on the loss of synergies from corporate and other services being provided to the regulated network business, such that overheads and other costs of providing direct control services which are currently shared with NTESMO will be borne, or a greater share will be borne, by the regulated network business. These costs are likely to be material and if incurred should be able to be recovered through a positive pass through event.

1.1 Our initial proposal

In our initial proposal we proposed a new "NTEM Priority Reform Restructure Event" nominated pass through event. We proposed to define this new cost pass through event as:

Any legislative or administrative act of the Northern Territory Government to implement electricity market reforms which results in a structural change to Power and Water (for example by way of a separation of market and system operation functions) which materially changes the costs to Power and Water Corporation of providing direct control services in the next regulatory control period.

1.2 The AER's draft decision

In its draft decision, the AER did not accept our proposed pass through event. The AER considered that our proposed pass through event met the following requirements:

- The nature or type of event is able to be clearly identified at the time the determination is made for the service provider.

- A prudent service provider would not be able to reasonably prevent an event of that nature or type from occurring or substantially mitigate the cost impact of such an event.
- There is no other matter the AER considers relevant and which the AER has notified network service providers is a nominated pass through event consideration.

The AER noted the ongoing nature of the NTEM Priority Reform Program and agreed that it may result in some form of restructure along the lines indicated in our proposal. However, the AER stated:

At this stage, we do not have sufficient information to assess the proposed event against this consideration of the NT NER. We agree with Power and Water Corporation that this event may be covered by the regulatory change event in clause 6.6.1(a1)(1) of the NT NER. However, there is uncertainty around how a restructure, if any, would be implemented. We need to have a reasonable level of certainty around the form of implementation (e.g., through legislation, a legislative instrument, direction or administrative change) for us to be able to form a view as to whether the proposed event is likely or unlikely to be covered by any category of pass through event specified in clauses 6.6.1(a1)(1) to (4) of the NT NER.¹

The AER welcomed any additional information to help provide greater certainty around the form of implementation prior to the final decision.

¹ Confidential appendix A to attachment 15 - Pass through events - NTEM priority reform restructure event | Draft decision - Power and Water Corporation distribution determination 2024–29, AER, page 2

2. Our response to the draft decision

2.1 Proposed pass through event

As noted in our initial proposal, the recommendations of the Gateway Review Report will be considered by Cabinet. This has not yet happened. However, since the initial submission, we have facilitated discussions between the AER and NT Government representatives to help provide additional certainty on the NTESMO separation, and potential implementation options.

We understand the AER has been provided with a copy of the Gateway Review Report to help better understand the recommendation. However, we acknowledge there is limited information in that report about how the separation may be implemented.

We understand the AER's rationale for not including our initial proposed pass through event was on the basis that it may be covered under the existing Regulatory Change Event pass through. In accordance with the definition, this would rely on the separation being implemented as an obligation on, or requirement of Power and Water under an Act, or instrument made or issued under that Act.

While it is feasible that a separation of NTESMO from Power and Water may be implemented via legislative change and therefore recovered as a Regulatory Change Event, it is also reasonable to conclude that a NTESMO separation could be implemented without legislative change. For example, the change could be implemented via the transfer or sale of NTESMO and the transfer/novation of the NT Utilities Commission System Control licence to another party (such as the Australian Energy Market Operator or a newly established entity). These types of administrative arrangements are credible and likely implementation options that would not meet the definition of a Regulatory Change Event. This would leave Power and Water unable to recover the costs of separation.

Based on this, we consider a nominated cost pass through is required to provide us a reasonable opportunity to recover at least the efficient costs of providing direct control network services and complying with regulatory obligations.

As discussed in our initial proposal, this revised cost pass through is proposed to be applied as part as the control mechanism for Alternative Control Services.

2.2 Proposed definition

We have revised the nominated cost pass through event relating to the NTESMO separation to remove reference to "a legislative act" on the basis that this would meet the definition of a Regulatory Change Event. Our revised nominated cost pass through event is:

Any administrative act of the Northern Territory Government to implement electricity market reforms which results in a structural change to Power and Water (for example by way of the separation, sale or transfer of market and/or system operation functions to another entity) which materially changes the costs to Power and Water Corporation of providing direct control services in the next regulatory control period.

We highlight that, if the NTESMO separation is implemented via legislation, then costs will be recovered as a Regulatory Change Event cost pass through, and this nominated cost pass through event will not be activated. Any costs associated with separation will only be recovered once.

3. Meeting the NT NER requirements

As part of the AER’s assessment of additional pass through events it must assess them against the NER considerations for a nominated cost pass through event set out in the NT NER.² These considerations are set out in Table 3.1 together with an assessment of the proposed new pass through event.

This analysis indicates that the AER should accept the proposed event as meeting the requirements of the nominated pass through event considerations.

Table 3.1: Summary of assessment of new pass through event against the NT NER considerations

NT NER consideration (6.5.10(b))	Assessment of the event against rule considerations
Whether the event proposed is an event covered by a category of pass through event specified in the Rules clause 6.6.1(a1)(1) to (4)	No
Whether the nature or type of event can be clearly identified at the time the determination is made for the service provider	Yes, the event can be clearly identified as per the proposed definition
Whether a prudent service provider could reasonably prevent an event of that nature or type from occurring or substantially mitigate the cost impact of such an event	No, the event would arise from a decision of government
Whether the relevant service provider could insure against the event, having regard to: <ul style="list-style-type: none"> • the availability (including the extent of availability in terms of liability limits) of insurance against the event on reasonable commercial terms; or • whether the event can be self-insured on the basis that: • it is possible to calculate the self-insurance premium; and • the potential cost to the relevant service provider would not have a significant impact on the service provider’s ability to provide network services 	It would not be possible for us to insure or self-insure against this event as it would result from a decision of government
Any other matter the AER considers relevant and which the AER has notified network service providers is a nominated pass through event consideration	The AER has previously considered and accepted similar “separation” events in the past ³ , in particular when the New South Wales DNSPs were separated by a sale process from their stapled retail businesses

² Clause 6.5.10(b) of the NT NER

³ AER Final Decision NSW DNSPs 2009-2014, April 2009 at pages 282-283

Contact

Australia: 1800 245 092

Overseas: +61 8 8923 4681

powerwater.com.au

PowerWater 