

Submission in Support of Ring-Fencing Guideline Waiver Application



Version 1
D2024/97511



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1. Introduction

a) Overview

Power and Water Corporation (**Power and Water**) 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, Power and Water is also the System Controller and Market Operator for the Northern Territory Electricity Market (**NTEM**).

It is important to note that the transport of electricity is just *one* of the essential services that Power and Water 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, Power and Water owns and operates a number of electricity networks not subject to Australian Energy Regulator (**AER**) framework, the costs of providing these services are recovered via funding from the Department of Housing or directly from retailers. These services are provided by Power and Water 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 territory's major centres.

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 are subject to the AER's Ring-Fencing Guideline (**Guideline**).

While ring-fencing applies to Power and Water 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 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 Power and Water has identified that compliance with clause 4.2.4 of the Guideline is practically difficult to achieve and will likely impose additional costs on Power and Water without any corresponding benefit to customers. To address these issues and promote outcomes more consistent with the achievement of the National Electricity Objective (**NEO**), Power and Water is seeking a waiver from the following obligation under the Guideline:

- **Clause 4.2.4 - requirement to maintain an office and staff registers:** Power and Water is not subject to office or staff sharing restrictions under the NT modified Guideline. This waiver would address this inconsistency.

In May 2022, the AER did grant a waiver to Power and Water in respect of clause 4.2.4, however it will expire on 30 June 2024. The circumstances underpinning the rationale for the waiver have not changed, as such Power and Water is applying for a further waiver in relation to clause 4.2.4 for a term to align with its next and subsequent regulatory control periods.

Power and Water does not envisage that there would be any competition impacts (real or perceived) in granting the waiver, as we are not seeking to use this waiver to compete with other service providers. The 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 customers, 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 Power and Water is applying for a waiver
- b. the reasons Power and Water is applying for a waiver
- c. the details of the services in relation to which Power and Water 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 Power and Water 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 Power and Water proposes to undertake if the waiver were granted
- h. the reasons Power and Water considers the waiver should be granted.



2. Details of waiver application

a) Obligations sought to be waived

Clause 4.2.4 – publication of office and staff register

Power and Water 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 Power and Water is seeking a waiver from having to publish and maintain office and staff registers on its website.

In its decision published in May 2022 granting a waiver in relation to clause 4.2.4, the AER recognised the inconsistency in requiring compliance with 4.2.4 (publication of office and staff registers) while not requiring compliance with clauses 4.2.1, 4.2.2 and 4.2.3 (relating to staff sharing and office sharing) due to the NT specific derogations. The AER went on to note the inconsistency creates a compliance burden for seemingly no benefit to consumers as the primary clauses targeting the possible harms are not applicable, and considered that waiving compliance with this clause would not change the current potential for cross-subsidisation or discrimination.

b) Reasons for application

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

- Power and Water would incur additional costs if it was required to comply with the obligation, which would ultimately be passed on to customers without delivering any corresponding benefit.
- Granting of the waiver 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.
- Would promote outcomes more consistent with the achievement of the NEO.

c) Services in relation to which Power and Water is seeking a waiver

Power and Water is seeking a waiver from clauses 4.2.4 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

Power and Water propose that the waivers commence as soon as possible, and that:

- The waiver for 4.2.4 [publication of staff and property register] is linked 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.

Therefore the waiver should apply **for the next regulatory control period commencing on 1 July 2024, and the subsequent regulatory control period commencing on 1 July 2029.**

e) Cost of compliance with relevant obligations

In relation to the waiver for compliance with clause 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.

f) Regulatory control period for waiver

The regulatory control period for the waiver is 1 July 2024 to 30 June 2029, and given the unlikelihood that clause 6.17.1B of the NT NER will be amended, we are also seeking the waiver to apply to the subsequent regulatory control period, i.e., 1 July 2029 to 30 June 2034.

g) Additional measures Power and Water proposes to undertake

Risk and compliance management forms an integral part of Power and Water's strategic and operational planning processes, to ensure legal, regulatory and commercial compliance obligations are systematically identified, captured and managed through an enterprise wide compliance obligations register with assigned accountabilities. Obligations are risk assessed and managed through application of Power and Water's risk management framework.

Power and Water's compliance with the Guideline is managed as part of its overall compliance management frame and includes specific ring-fencing procedures and policies such as:

- NT & AER Electricity Ring-fencing Accounting and Cost Allocation.
- Maintenance of AER-Ring Fencing Registers Procedure.
- AER Ring-Fencing Glossary.
- Ring-Fencing Do's and Don'ts.
- Ring-fencing Information for Services Providers.

These "Ring Fencing specific" policies and procedures are designed to support and complement Power and Water's overall compliance management framework.

Power and Water has continued to up lift its compliance generally with the Guideline, as demonstrated through the annual ring fencing compliance reports to the AER.

In particular, Power and Water has undertaken the following activities during the 2023 reporting period as part of its ongoing commitment to improve compliance with its obligations under the Guideline:

- Training and awareness activities – a ring fencing training module is mandatory for all new employees working in the electricity business of Power and Water. In addition, Power and Water continued to raise awareness of ring fencing obligations within the business.
- Endorsement by Power and Water's Executive Leadership Team of a Strategic Plan which sets out Power and Water's key objectives to manage compliance with the Guideline, noting that the key strategic objective is to achieve zero reported breach for each reporting period.
- Resolution of previous outstanding actions – as part of Power and Water's commitment to ensuring compliance with the Guideline, Power and Water's Compliance Team in conjunction with business owners resolved the outstanding actions arising from Power and Water's previous annual ring-fencing compliance reports.



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.

Power and Water consider that there is negligible benefit in complying with the requirement at this point in time, and that the costs of Power and Water complying with the obligation in relation to our services would outweigh any benefits to our electricity customers. We therefore consider that waiving the obligation 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
next regulatory control period	1 July 2024 to 30 June 2029
DNSP	Distribution Network Service Provider
AER Ring-fencing Guideline	Electricity Distribution Ring-fencing Guideline [date]
NEO	National Electricity Objective
NER	National Electricity Rules
Other distribution services	Distribution services other than direct control services
RESP	Related Electricity Service Provider
Subsequent regulatory control period	1 July 2029 to 30 June 2034