

MINISTERIAL COUNCIL ON ENERGY

Communiqué

Melbourne, 11 June 2010

Australian, State and Territory Government Energy Ministers met in Melbourne on 11 June 2010 for the 23rd Meeting of the Ministerial Council on Energy (MCE). The MCE has responsibility for national policy and governance of the Australian energy market.

Key outcomes from the meeting were:

- Ministers endorsed a set of policy positions that will underpin the legislation to give effect to the National Energy Customer Framework (NECF) which will provide strong protections for consumers on a national basis.
- Ministers agreed to a comprehensive review of enforcement regimes across all the national energy legislation.
- Ministers agreed a policy response to the Australian Energy Market Commission's (AEMC) Stage 2 final report of its *Review of Demand Side Participation in the National Electricity Market*.
- Ministers noted receipt of the final report of the AEMC's *Review of the Effectiveness of NEM Security and Reliability Arrangements in Light of Extreme Weather Events*.

Agency Reports

Ministers noted reports from the Australian Energy Market Operator (AEMO), the AEMC and the Australian Energy Regulator (AER) on current and expected market conditions and work programs. Each agency also provided Ministers with an update on its key work streams.

Ministers thanked the outgoing Chairs of the AEMC and the AER, Dr John Tamblyn and Mr Steve Edwell, for their contribution to the establishment of these organisations and their roles in the development of Australia's national energy markets. Ministers also recognised the contribution of Mr Ian Woodward to the AEMC.

AEMC Strategic Energy Market Outlook Initiative

Ministers noted the AEMC's intention to provide an annual analysis of emerging opportunities, challenges and risks for the Australian energy markets. Ministers supported the AEMC's initiative and noted that it would add to the information available on energy markets and would help to inform the MCE's work program.

Forward Work Program

Ministers discussed the challenges facing energy markets, noting changes in the investment and policy environment since their last meeting. Ministers agreed to a broad forward work program which included recently-added work streams, such as the AEMC's *Transmission Frameworks Review*, and the continuation of activities in key areas, such as through the *Review of Demand Side Participation in the National Electricity Market*. Ministers also reiterated their commitment to monitoring

investment activities in the markets proactively to ensure continuing security of supply.

Ministers agreed that items from the *Ministerial Council on Energy Forward Work Plan related to the Energy Market and Climate Change Policies*, which was agreed in February 2009, would be rolled into the new work program.

Ministers also agreed to deliver regular reporting on competition and regulatory reform initiatives to the Council of Australian Governments (COAG) via the Business Regulation and Competition Working Group Implementation Monitor.

AEMC Reviews

Ministers agreed to release their policy response to the AEMC's *Review of Distribution Network Planning and Expansion*. After consideration of further advice from the AEMC on the cost threshold for application of the Regulatory Investment Test for distribution businesses, Ministers agreed to the proposed threshold and to release the AEMC's advice. It is intended that proposed rule changes will now be subject to the usual AEMC rule change processes, which include public consultation and analysis.

In addition, Ministers noted receipt of the AEMC's Final Report for its *Review of the Effectiveness of NEM Security and Reliability Arrangements in light of Extreme Weather Events*. Ministers recognised the importance of ensuring that market settings are appropriate to mitigate possible disruptions to supply in extreme weather events, such as the heatwave in Victoria and South Australia in January 2009.

Energy Technical and Safety Regulation

Ministers noted the progress on the implementation of the Energy Technical and Safety Harmonisation Enhancement Plan and reiterate the importance of progress in developing the intergovernmental agreement and forming the Energy Supply Industry Safety Committee to facilitate implementation of the Plan.

National Energy Customer Framework

In an important step towards the transfer of the regulation of energy retail and non-economic distribution activities from individual jurisdictions to a national framework, Ministers endorsed a set of policy positions that will underpin the legislation to give effect to the NECF. Further detail on the framework is outlined below in **Attachment A**.

Ministers consider the NECF represents a significant reform of energy regulatory arrangements that will enhance the national character and efficiency of Australia's energy markets, and provide strong protections for consumers on a national basis. Senior Officials have been tasked with resolving a small number of outstanding issues and implementation arrangements to ensure a strong package is delivered. Ministers will consider the final legal instruments in coming months and expect the package to be introduced into the South Australian Parliament in the Spring 2010 sitting.

Ministers also agreed to recommend to COAG that the Australian Energy Market Agreement be updated to refer to the National Energy Retail Law. The update is also designed to empower the AER to enforce its functions as intended under the NECF.

Review of Enforcement

Ministers agreed to a comprehensive review of enforcement regimes across all the national energy legislation to ensure that the interests of customers continue to be protected, and the integrity of the energy markets is maintained.

Retail Price Regulation

Ministers discussed concerns raised recently by the Productivity Commission and the COAG Reform Council (CRC) over the process for jurisdictions to respond to the AEMC reviews of retail energy market competition. In response, Ministers requested that the Standing Committee of Officials further consider the issue and come back to Ministers with advice.

Demand Side Participation in the National Electricity Market

Ministers agreed a policy response to the AEMC's Stage 2 final report of its *Review of Demand Side Participation in the National Electricity Market* (the Review), and noted that work is already underway to address certain recommendations, including AEMO's work programs to improve information gathering on demand side participation and to address barriers to cost-effective small generator participation in the National Electricity Market (NEM).

Ministers supported the AEMC undertaking a final Stage 3 of the Review to consider the implication of 'smart' technologies on NEM frameworks and key elements of Measure 2.1.1 of the National Strategy on Energy Efficiency, which is to develop actions to address remaining electricity market barriers that limit the uptake of economic energy efficiency opportunities.

Ministers supported the AEMC's recommendation for further investigation of technical connection standards for distributed generation, noting that greater clarity and consistency will reduce barriers to the efficient uptake of these technologies.

Ministers recognise that the implementation of the Review's recommendations, in conjunction with the new *National Framework for Electricity Distribution Network Planning and Expansion*, will be an important step to addressing barriers to demand side participation in the energy markets.

Smart Meters

Ministers noted the progress of the National Stakeholder Steering Committee's work on elements of the national framework for smart metering, including work towards robust business to business procedures, and agreement of necessary technical specifications, to support retailers and distributors in the efficient delivery of smart metering services to energy consumers.

Ministers reaffirmed the importance of ensuring consumer protection and safety arrangements are appropriate wherever a roll-out is progressed, and noted that any required national aspects of such protections would be established through additions to the NECF. Ministers noted the work being done by Victoria in conjunction with its smart meter roll-out in this regard.

Ministers also noted the recent Commonwealth announcement of the successful *Smart Grid, Smart City* demonstration project. There are expected to be lessons from this program that will be shared across industry, market bodies and Governments.

Gas Short Term Trading Market

Ministers noted the decision by AEMO to delay the commencement of the gas Short Term Trading Market (STTM) hubs in Sydney and Adelaide to 1 September 2010. Ministers considered that AEMO's decision to delay the start of the STTM is a good demonstration of the benefit of undertaking a comprehensive market readiness assessment prior to market start. The Market Trial will be extended until the market commencement.

The development and establishment of the STTM has been an industry-driven process. Ministers noted the ongoing valuable input from gas industry participants in developing this key initiative, in particular through the Gas Market Leaders Group.

Ministers also noted the progress underway towards the establishment of a Brisbane STTM hub to commence in 2011. The STTM, with its balance between long standing trading practices and new competitive mechanisms, will provide a solid foundation for the next phase of gas market reform as it continues to evolve and expand across Australia.

NATIONAL ENERGY CUSTOMER FRAMEWORK

The Ministerial Council on Energy (MCE) endorsed the National Energy Customer Framework (NECF) high level policy settings at its meeting in Melbourne on 11 June 2010.

This package represents a significant reform of energy regulatory arrangements that will enhance the national character and efficiency of Australia's energy markets, and provide strong protections for consumers on a national basis. Senior Officials have been tasked with resolving a small number of outstanding issues and implementation arrangements to ensure a strong package is delivered. Further information on this important initiative is outlined below.

What is the National Energy Customer Framework?

1. The NECF will be a national regime for the sale and supply of electricity and gas by retailers and distributors to retail customers. It contains a range of energy-specific consumer protections and is a significant step toward a simplified regulatory regime for retailers and distributors.¹
2. The NECF will be implemented through new laws and rules called the “National Energy Retail Law” (NERL), the “National Energy Retail Regulations” and the “National Energy Retail Rules”.
3. The NECF does not displace other energy legislation or general consumer protection frameworks. In particular —
 - a. The NECF works in a complementary way with general consumer protection laws which apply in the energy sectors at both State and Commonwealth level, including privacy laws and the new Australian Consumer Law.
 - b. Jurisdictional energy laws will continue to supplement key aspects of the NECF through measures such as energy ombudsman and guaranteed service level schemes, and social policy initiatives such as community service obligations.
 - c. The NECF forms the final piece of the broader national energy regulation framework, working in tandem with the established legislative frameworks for other elements in electricity and gas supply chains.

¹ Western Australia will later consider applying the NECF, and the Northern Territory has not decided to apply the NECF in respect of electricity.

4. The NECF is therefore part of a total package of consumer laws which, compared to those currently available in separate jurisdictions' laws, will provide equivalent or enhanced levels of energy consumer protections while streamlining the regulatory environment.

A retail market objective that guides the decision makers

5. The NERL will be an integral part of the national energy laws, and like the existing laws, has a central objective to guide regulation by the Australian Energy Regulator (AER) and rule development by the Australian Energy Market Commission (AEMC). The objective is "to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy."
6. The long term interests of consumers in competitive energy markets will be promoted through the application and development of consumer protections to support effective consumer choice and ensure ongoing access to energy on reasonable terms.
7. Accordingly, the NERL will provide further guidance to the AER and AEMC, when performing their regulatory and rule-making functions. For instance, the AER and AEMC will be required, when carrying out their functions in accordance with the overarching energy market objective, to act in a way that is compatible with the provision of consumer protections for small customers, including customers experiencing hardship.

There will be a managed progressive transition to the NECF

8. As agreed by the MCE at its meeting on 4 December 2009, jurisdictions will introduce the NECF progressively between July 2011 and July 2013. Each jurisdiction will decide upon the most appropriate start date, given its market and regulatory environment. In some cases, State legislation will be enacted or amended to support the NECF (e.g. State ombudsman arrangements) or continue some State-based arrangements for an interim period. The progressive transition is aimed at ensuring a smooth and orderly transition to the national arrangements for both consumers and other stakeholders.

Benefits of the NECF for energy customers and businesses

9. The NECF provides benefits for energy customers and energy businesses by:
 - a. ensuring customers are able to access essential energy services on reasonable terms and conditions, with sufficient protections in place that recognise the essential nature of energy services; and

- b. reducing the regulatory burdens faced by energy businesses, particularly retailers, which is expected to improve efficiency in energy service delivery and foster greater competition.

A robust regime which protects customers

10. Small customers will be supported under the NECF by a range of customer protections, including:
 - **Guaranteed access** for all small customers to an offer of supply;
 - **An accessible framework for customers to arrange new connections** to gas and electricity networks – including those customers wishing to install a small-scale generator, such as a solar photovoltaic (PV) system, for the export of electricity to the grid;
 - **Mandatory minimum terms and conditions** for retail contracts for all small customers, including pre-payment meter market retail contracts in jurisdictions where these are allowed;
 - **Limitations on disconnection**, including processes to follow, restrictions on when disconnections can occur, additional protections for customers experiencing hardship or financial difficulty and a prohibition on disconnecting premises where life support equipment is required;
 - **A customer hardship regime**, requiring retailers to develop customer hardship policies that must be approved by the AER, with certain prescribed elements to assist residential customers experiencing longer-term payment difficulties;
 - **Energy marketing rules** that build on the requirements set out in the Australian Consumer Law to ensure customers receive full information before they enter an energy contract, and ensuring retailers are held accountable for marketing that is conducted on their behalf;
 - **A small claims compensation regime**, facilitating payment of small compensation claims, where jurisdictions choose to opt in;
 - **A price comparator service**, to be developed and administered by the AER which facilitates the comparison of market offers by customers, where jurisdictions choose to opt in to replace State-based services; and
 - **A compliance and performance monitoring regime** to enable transparent monitoring of the state of the energy retail market for customers, overseen by the AER and supported by a robust enforcement regime.
11. The NECF also establishes a strong national regime to protect customers in the event a retailer fails – the retailer of last resort regime. This regime is designed to ensure continued access to energy by customers where a retailer is no longer able to provide services in the market.

Reduced regulatory burdens on retailers and fostering greater competition in retail markets

12. The national framework will also remove regulatory overlap and unnecessary divergence and costs that flow from such duplication. For example, one national framework rather than multiple state and territory regimes and the

move to a national regulator, the AER, is expected to reduce compliance costs for energy businesses. The introduction of a national retailer authorisation will decrease the current regulatory duplication involved in obtaining retail licences in each separate jurisdiction.

13. Retailers will benefit from easier access to a wider range of customers nationally and greater regulatory certainty. The facilitation of effective competition will also see retail customers benefit from more choice in energy retailers and the services they offer.

Next Steps

14. Senior Officials have been tasked with resolving a small number of outstanding issues and implementation arrangements to ensure a strong package is delivered. Ministers will consider the final legal instruments in coming months.
15. Officials will continue to undertake briefing sessions with stakeholders, which will include discussion of implementation issues. Officials are developing a detailed response to stakeholder comments which will be released prior to the introduction of the NECF into the South Australian Parliament.
16. It is planned that the approved NECF package will be introduced to South Australian Parliament in the Spring session of 2010.