



11 November 2005

Manager – MCE Secretariat
Department of Industry, Tourism and Resources
GPO Box 9839
CANBERRA ACT 2601

Dear Sir/Madam

Response to the MCE's Proposed Framework Schedule for Transfer of Distribution and Retail Functions

ActewAGL welcomes the opportunity to respond to the *Proposed Framework Schedule for Transfer of Distribution and Retail Functions* released by the Ministerial Council on Energy (MCE) during October. ActewAGL is a member of the Energy Networks Association (ENA) and fully supports the ENA's detailed response to the *Proposed Framework Schedule*. However we would like to supplement this with our own perspectives in this separate submission.

ActewAGL is a multi-utility company combining energy distribution and retail operations with interests in water services management and telecommunications. It operates as a unique public-private joint venture between the Australian Gas Light Company (AGL) and the ACT Government owned ACTEW Corporation. The ActewAGL Distribution partnership owns and operates the electricity distribution network in the ACT and the gas distribution networks in the ACT and Queanbeyan, and in Nowra. The ActewAGL Retail partnership sells energy throughout the Capital Region and south-eastern NSW.

With almost 140 000 electricity customers and just over 96 000 for natural gas, ActewAGL operates on a relatively small scale. Customers are predominantly residential with the base spread across a large area. ActewAGL is therefore especially keen to ensure that the move to a national framework addresses the needs of the full range of network and market characteristics so that service providers and customers in relatively small markets are not left worse off. We are particularly concerned to ensure that the proposed transfer of functions results in more efficient and effective regulatory arrangements, not an increase in regulatory burden.

ActewAGL accepts that the *Proposed Framework Schedule* is at a high-level and that many underlying policy questions are still to be resolved. However, we are concerned that several of the listed items add to uncertainty about what is to be regulated, who will regulate and what form the regulation will take. The list also appears to pre-empt some issues still open to consultation. ActewAGL cannot therefore fully support the *Proposed Framework Schedule* until these matters are clarified.

ActewAGL believes that the schedule should be supported by a commitment from the MCE that:

- a national framework does not imply enforced national uniformity; and
- where a function is scheduled for transfer to the national framework, jurisdictions will be required to remove all potentially overlapping or duplicating licensing requirements, legislation and other instruments.

National uniformity

It is important to ensure that the list does not come to drive a *highest common denominator* approach, whereby regulation of each item on the list is considered necessary in each jurisdiction. Not all of the functions listed in the schedule have equivalent application in every state and territory jurisdiction. A key issue is whether each function proposed as a national responsibility is expected to be applied across all jurisdictions. For example, service performance *targets* (item 4 on the list) are not currently used in all jurisdictions. ActewAGL believes that it would be wrong to mandate them simply because they are included in a list of national regulatory functions.

A further key concern is how jurisdictional differences across items on the list will be treated. For most of the items, current regulatory arrangements vary widely across jurisdictions. While in some cases there may be benefits from moving to greater national consistency, there may also be costs. For example, service standard regimes in one jurisdiction may not be appropriate to other jurisdictions with different customer bases and network characteristics.

The MCE needs to recognise that the different regulatory approaches are likely to have arisen from the knowledge acquired over time by the state and territory regulators of the specific conditions and needs of service providers and customers in their jurisdictions. ActewAGL believes that the *Proposed Framework Schedule* should be accompanied by a commitment from the MCE that national responsibility for a function will not necessarily imply national uniformity. Uniformity should be adopted only when it can be shown that there will be a net benefit.

Possible overlapping requirements

ActewAGL is concerned that there are some cases where economic regulatory requirements (national responsibilities) appear to overlap with technical and safety requirements (state and territory responsibilities). For example, distributor disconnections and reconnections for small-end customers are listed as a national responsibility (item 9). However, in their role of regulating technical and safety matters, states and territories may also have requirements for disconnections and reconnections on technical and safety grounds. A further example is load shedding and curtailment of supply. This is listed as a state and territory responsibility (item 27). However, provisions for load shedding may also be part of access arrangements for gas networks, and therefore part of the national function of economic regulation.

ActewAGL believes that the potential for overlapping requirements in the proposed schedule needs to be addressed.

Allocating functions – not describing the form of regulation

ActewAGL is concerned that the *Proposed Framework Schedule* in some cases goes beyond its stated purpose of allocating functions to describe the nature of the regulation of those functions. An example is item 3 which refers to the function of regulating tariffs, but goes on to set out some principles for setting tariffs.

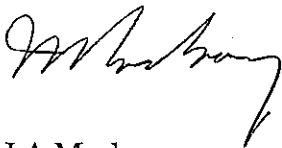
ActewAGL believes that the list should deal only with the allocation of functions, and not make any prescriptions about the form of regulation. The list should also clarify *who* will be making decisions about the item in regard to the respective intended roles of the national regulatory institutions (that is, the MCE as the policy maker, AEMC as the rule maker and AER as the regulator and rule enforcer). ActewAGL fully supports the proposed matrix of functional and institutional allocations provided as Attachment B to the ENA submission.

Retail price regulation

Retail price regulation is listed as a national function (item 15), with the comment 'relates to the model to be developed by the Commonwealth'. This comment needs to be clarified. ActewAGL notes that the matter of retail price regulation is not covered in the Consultant's Paper, so there is considerable uncertainty about what this model could involve. We also note that the MCE Communiqué of 4 November 2005 referred to the transfer of retail and distribution functions, and said that distribution functions would be transferred by the end of 2006. However, no guidance was provided on plans for retail regulation. ActewAGL cannot support the proposed retail transfer when it involves considerable uncertainty about what will be regulated and who will regulate.

Once again, thank you for the opportunity to contribute to the energy market reform process. Should you have any questions relating to this submission, please direct them to Mr David Graham, Director Regulatory Affairs and Pricing on (02) 6248 3605 or by e-mail to david.graham@actewagl.com.au.

Yours faithfully



J A Mackay
Chief Executive Officer