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Re: Alinta Response to Retail Policy Working Group Composite Paper June 2007

Alinta Limited appreciates the opportunity to make this submission on the RPWG composite paper of June 2007.

If required, I can be contacted on (02) 9270 4512 or email: sandra.gamble@alinta.net.au.

Yours sincerely,

Sandra Gamble
Group Manager Regulatory
Alinta Limited

KEY MESSAGES IN THIS SUBMISSION:

Framework issues

1. Lack of MCE/SCO guidance

- Alinta acknowledges and appreciates the lengthy consultative process which the RPWG has followed thus far in developing a national non-price framework. But there has and continues to be a major deficiency in the process; namely, the lack of overall guidance and direction from the MCE/SCO as to:
 - the overarching policy objectives the framework;
 - the long term vision and expectations for the framework; and therefore
 - the essential issues of framework design and content which the RPWG process was anticipated to deliver.
- As a result, stakeholders have no indication as to (a) the relevance of the consultants' proposals to MCE/SCO policy development and (b) the extent to which stakeholders' critiques of particular options, recommendations or policy positions presented by the consultants would actually contribute to further policy development.

2. Consultants' criteria

- Alinta suggests that there have been very few specific landmarks which could be relied upon by consultants to develop their proposals. As a result, consultants have limited themselves to the more mechanistic policy objectives (ie implementation matters).
- Given the recommendations in the Allens Arthur Robinson composite paper, Alinta submits that it appears that the most significant factors guiding the recommendations have been:
 - a strong focus on consistent outcomes between jurisdictions, electricity and gas (where consistency has generally been equated with uniformity);
 - the examples of past jurisdictional practice - particularly examples of what are perceived to be the prevalent forms of non-price jurisdictional regulation (which has frequently led to a focus on electricity);
 - a preference for approaches which involve a quantum increase in regulatory powers (frequently to be expressed in laws and rules) which are designed to increase regulatory control and minimise reliance the benefits of a commercial access process in accordance with the criteria of the National Access Regime (NAR)¹.

3. Consistency of frameworks

- Alinta submits that consistency as a policy objective may have some practical benefits, but is far too limited to be used as an overarching goal (as the composite paper has done).

¹ Part IIIA of the *Trade Practices Act 1974*

- There is no link between the overarching framework of Part IIIA of the *Trade Practices Act 1974* which provides a relevant guiding policy approach to national access regulation – whether price or non-price.
- Alinta submits that the RPWG policy development process has never sought or intended an outcome of all-out uniformity between electricity and gas. Each sector has its own drivers and characteristics.
- Alinta submits that a policy direction from the MCE to guide the RPWG process should provide for overall consistency in a national regulatory framework subject to bigger picture policy objectives which have guided the development Part IIIA, the Competition Principles Agreement and the AEMA, particularly:
 - simplicity and cost-effectiveness;
 - maximising the potential for distributors and retailers to contribute to economic welfare²;
 - facilitating operational consistency for retailers across jurisdictional boundaries;
 - maximising the use of commercial processes to meet these objectives.

In Alinta's view an emphasis on commercial processes is particularly relevant, given the MCE intention to submit access-related parts of the law and statutory rules for certification under Part IIIA.³ Alinta particularly notes the composite paper's lack of vision for relationships between contracting parties under an access framework, preferring instead to replace commercial outcomes with highly prescribed law and rules. Alinta observes that the gas access framework has evidenced greater understanding and use of commercial relationships, whereas historically the electricity regulatory framework has not had this focus.

The composite paper (and its predecessors) has essentially tried to develop a national framework based on a narrowly focused examination of jurisdictional regulatory practice. Consistent with the views discussed above, Alinta considers that policy objectives and an overall framework design should be established first. In that light, Alinta urges that a workable starting point for national policy development would be to examine what elements of a national framework already exist which can be readily applied consistently to both electricity and gas.

Commercial relationships and contracting

4. Hybrid model developed by Allens Arthur Robinson

- Alinta again notes the composite paper's lack of vision for relationships between contracting parties under an access framework.
- The composite paper makes a series of recommendations for a 'hybrid' model to apply to the dealings between distributors and end-users on one hand, and distributors and retailers on the other. This model assumes that distributors have a direct relationship with end-users, to be expressed in a formal contact.
- Alinta has major concerns with this concept as it would apply to gas networks in a national framework. In Alinta's view, the composite paper does not evidence a conceptual understanding of the relationship between parties in an access framework and the use of contract law.

² in terms of economic efficiency, particularly dynamic efficiency

³ as stated in SCO *Statement of Scope for a National Legislative Framework for Gas and Electricity*, July 2006 page 7

- Consistent with Alinta's suggested objective of simplicity and cost-effectiveness, Alinta submits that the existing linear contractual model between distributors and retailers should continue to apply in gas. Distributors may elect to arrange with retailers to deal directly with end users on certain network matters, but this should be an optional arrangement and not an enforced one.
- The tripartite relationship generally prevailing in electricity is reasonably well established, and would be difficult to change in the short term without disruption. Alinta notes that electricity distributors do have a technically focused relationship with end-users, but would not agree that this relationship arises out of the application of a contracting model under a well-understood third party access framework.

5. The distributor relationship with retailers

- The composite paper makes a series of recommendations to apply to the relationship between distributors and retailers. There are slightly different versions proposed for electricity and gas, but the essential feature of both is that certain terms and conditions which accompany a pricing proposal (in electricity) or an access arrangement (in gas) will be determined by a regulator controlled process under the Law and Rules.
- Alinta considers that the composite paper's treatment of this issue does not reflect an accurate understanding of the nature of the access framework currently prevailing in gas (and its expression in Part IIIA) and which is not yet properly recognised in electricity (see point 6 below).
- Despite the composite paper's disclaimer that its recommendations do not affect established economic regulation, Alinta considers that the paper's suite of recommendations for the distributor-retailer relationship exhibits serious ignorance of (and therefore overlaps with) the existing economic regulatory framework for gas, and (in some jurisdictions) for electricity.
- The paper's recommendations override the concept of a negotiated distributor-retailer contract or of a distributor proposing full terms and conditions accompanying a regulatory proposal.
- Alinta submits that the retailer interface recommendations of the composite paper require fundamental reconsideration following clarification from the MCE that commercial contracting remains a primary element in an access framework capable of certification under Part IIIA of the Trade Practices Act.

6. Link between price and non-price regulation

- Alinta submits that it is vital to recognise that there is a strong link between price (ie economic) regulation and the non-price regulation being handled by the RPWG. Non-price regulation is a component of economic regulation. The MCE's separate work streams have created an artificial division between these components.
- Under the economic regulatory framework, each distributor's price determination or access arrangement and associated terms and conditions form a complete package. Consequently, it is necessary for all these elements to be considered together and not in isolation or at different times.

- Alinta considers it essential that the access pricing rules developed by MCE/SCO recognise at an early stage any potential impact arising from RPWG recommendations on non-price terms and conditions.

OTHER HIGH LEVEL ISSUES

- Some recommendations in the composite paper are new or have been revised from earlier working papers, and Alinta's submission offers comment on these. In addition, Alinta considers it may be useful to summarise generally its position on major RPWG issues.
- However, as noted in the submission, there would seem little point in Alinta commenting on each of the very detailed recommendations in the composite paper until the future policy direction of the RPWG framework development process is made clear.

STRUCTURE OF THIS SUBMISSION

Part A – GENERAL

Part B - GUIDANCE FOR A NATIONAL FRAMEWORK

Part C - COMMERCIAL RELATIONSHIPS AND CONTRACTING

Part D - OTHER HIGH LEVEL ISSUES

- Obligation to provide connection services
- Business authorisation
- Ring fencing
- Retail failure
- Customer registration and transfer
- Metering
- Enforcement mechanisms.



Alinta Response to Retail Policy Working Group Consolidated Paper June 2007

Part A – GENERAL

1. Background to Alinta

Alinta is the largest energy infrastructure company in Australia. Following the acquisition of gas and electricity assets from AGL, Alinta manages, operates or owns a diversified portfolio of energy assets worth \$14 billion. Alinta has ownership interests in 14,350 km of gas transmission pipelines in all States and Territories and 47,400 km of gas distribution pipelines in WA, Victoria, NSW and the ACT. In addition Alinta has interests in electricity transmission, electricity distribution and power generation across Australia and New Zealand. Overall, Alinta serves energy supply to over 3 million customers.

Alinta's comments on the composite paper are made from the viewpoint of a distribution network owner and operator, and comment is made on retail issues only where there is significant interaction between retail and distribution.

2. Process to date

The paper has its genesis in the Australian Energy Market Agreement (AEMA) of May 2004. It is therefore part of an extended process of policy development going back over three years.

Alinta acknowledges the consultative process which the RPWG has followed thus far in developing the Retail and Distribution framework. The major deficiency in this process has been the lack of overall guidance and direction from the MCE/SCO as to the overarching policy objectives, long term vision and expectations for the framework, and therefore the essential issues of framework design and content to be addressed. In this regard, Alinta notes that there are presently two broad types of frameworks in operation: the Gas Access Regime which applies nationally and an assortment of diverse jurisdictional electricity regulatory regimes.

The RPWG consultation process with stakeholders has generally been to commission a series of external consultancy papers and invite responses as follows:

- The Allens Arthur Robinson paper of August 2004;
- The Gilbert+Tobin/NERA paper of May 2005;
- The *Proposed Framework Schedule for Transfer of Distribution and Retail Functions* of October 2005, based on the Gilbert+Tobin/NERA paper;
- The five Allens Arthur Robinson working papers on discrete elements of the regulatory framework (November 2006 – April 2007) which provided options and specific recommendations for each element;
- The current composite paper with some revised recommendations (June 2007).

Throughout this consultation, the MCE/SCO have clearly stated that the views and recommendations of consultants presented to stakeholders have been those of the various consultants and not MCE/SCO. Unfortunately, this has provided no guidance at all to stakeholders as to (a) the relevance of the consultants' proposals to MCE/SCO policy development and (b) the extent to which stakeholders' critiques of particular options, recommendations or policy positions presented by the consultants would actually contribute to further policy development.

Alinta notes that stakeholders have expended considerable effort to date in responding to consultants' detailed proposals. Alinta would therefore question the practical value of responding to all the composite paper's recommendations (and Attachments) in the highly detailed tabular format requested by the MCE/SCO⁴ until the necessary policy direction for the future direction of the RPWG process is clarified. Some further views on this matter are offered in Part D.

Part B – GUIDANCE FOR A NATIONAL FRAMEWORK

3. Consultants' criteria

Given that there has been no MCE guidance thus far as to how the outworking of the RPWG process should result in a clear national framework, Alinta suggests that there have been very few landmarks which could be relied upon by consultants to develop their proposals. As a result, consultants have limited themselves to basically focusing on one mechanical objective: consistency.

The composite paper (in section 1.4) lists the evaluation criteria used throughout the previous five Allens Arthur Robinson working papers, including:

- consistency across jurisdictions, and between gas and electricity regimes;
- existing jurisdictional arrangements, which were *'used to identify options for the national framework and to propose a recommended approach and an implementation architecture'*.⁵

Alinta therefore submits that the two most significant factors guiding the Allens Arthur Robinson recommendations have been:

- a strong focus on consistent outcomes between jurisdictions, electricity and gas (where consistency has generally been equated with uniformity);
- the examples of current jurisdictional practice - particularly examples of what are perceived to be the prevalent forms of non-price jurisdictional regulation (which has frequently led to a focus on electricity).

4. Policy, philosophy, vision and objectives

Alinta acknowledges that there is an objective of 'national consistency' in the broad AEMA objectives for the initial rules to be developed by MCE/SCO for non-price regulation.⁶ But by itself, it is a mechanical and limited objective. 'Consistency' is far too narrow as a policy goal and does not take into account more significant policy objectives, namely:

- simplicity and cost-effectiveness;
- maximising the potential for distributors and retailers to contribute to economic welfare⁷;
- facilitating operational consistency for retailers across jurisdictional boundaries;
- maximising the use of commercial processes to meet these objectives.

⁴ MCE Energy Market Reform Bulletin no 92, 19 June 2007

⁵ Composite paper section 1.3

⁶ Australian Energy Market Agreement (Amendment) 7 June 2006: Clause 14.5 begins: In order to ensure national consistency, the Parties agree, to the extent possible and where effective regulation is not impeded, that the initial rules will (a) Provide common regulatory arrangements for the electricity and natural gas sectors.

⁷ in terms of economic efficiency, particularly dynamic efficiency

Alinta submits that the RPWG policy development process has never sought or intended an outcome of all-out uniformity between electricity and gas. Each sector has its own drivers and characteristics.

Alinta considers that a policy direction from the MCE to guide the RPWG process should provide for overall consistency in a national regulatory framework subject to bigger picture policy objectives which have guided the development of Part IIIA, the Competition Principles Agreement and the AEMA. Alinta particularly notes that the RPWG process has not established a clear link with the overarching framework of Part IIIA of the *Trade Practices Act 1974* which provides a relevant guiding policy approach to national access regulation – whether price or non-price.

In Alinta's view an emphasis on commercial processes is particularly relevant, given the MCE intention to submit access-related parts of the law and statutory rules for certification under Part IIIA.⁸ Alinta particularly notes the composite paper's preference for highly prescribed law and rules rather than commercial outcomes. Alinta observes that the gas access framework has evidenced greater understanding and use of commercial relationships, whereas historically electricity regulation has not had this focus.

The composite paper (and its predecessors) has essentially tried to develop a national framework from a narrowly focused examination of jurisdictional regulatory practice based on consistency. Alinta urges that the superior (and easier) course would be to first establish the relevant policy objectives and overall framework design. In that light, Alinta urges that a workable starting point for national policy development would be to examine what elements of a national framework already exist which can be readily applied consistently to both electricity and gas.

Part C – COMMERCIAL RELATIONSHIPS AND CONTRACTING

5. Distributor relationship with end users

The composite paper has repeated the recommendation of Working Paper 2 which provided for a 'modified linear' model (now called a 'hybrid' model) to apply to the relationships between retailers, distributors and end-users.⁹ This model assumes that distributors have a direct contractual relationship with both retailers and end-users, to be expressed in a formal contact between:

- the distributor and each end-user connected to the network;
- the distributor and each retailer using the network to supply end-users;
- retailers and end-users.

The composite paper puts the view that the model preferred in Working Paper 2:

- was most consistent with current arrangements;
- best facilitates a consistent model across the electricity and gas sectors; and
- should not involve material costs in establishing a consistent approach.¹⁰

Alinta has considerable difficulty with these generalisations and the fact that they appear to ignore major aspects of the requirements of the Part IIIA National Access Regime.

⁸ as stated in SCO *Statement of Scope for a National Legislative Framework for Gas and Electricity*, July 2006 page 7

⁹ Composite paper section 5

¹⁰ Composite paper section 5.3 p 34

In Alinta's view, the composite paper does not evidence a conceptual understanding of the relationship between parties in an access framework and the use of contract law. The policy objective of an access framework is that retailers and distributors have specific roles, whereby the distributor is required to operate efficiently and provide non-discriminatory access to the network. The retailer is able to contact with the distributor for use of the network to deliver competitive services to its customers. This relationship encourages the two parties to do what they are best able to do, and thereby maximises economic welfare.

Working Paper 2 itself observed that *'it is evident ---that different contractual models currently apply to the delivery of distribution services in the electricity and gas sectors'*.¹¹ The paper recognised that while jurisdictions sought to apply a direct contractual relationship between the distributor and end-user in electricity, this was not the case in gas where the linear model applied through the operation of the Gas Access Regime¹².

Considerations for gas

In gas, while any party can theoretically seek access to the network, it is only retailers, wholesalers and large users who are able to negotiate upstream supplies of gas and arrange pipeline transmission and network distribution to effect delivery of those supplies. Retailers are the access seekers on behalf of the very large numbers of end-users they supply, and it is retailers who are parties to access contracts with the monopoly elements of the supply chain (pipeline and distributor), not the end-user.

Individual gas retailers supply to end-users a delivered product, and are therefore able to compete with other retailers and provide diversity and choice to end-users. Individual retailers are the natural primary interface with their customers. There is no reason why, under this approach, the distributor *must* have any contractual relationship with the end-user. Alinta acknowledges that the distributor may be best placed to deal directly with end-users on certain network matters when this is the most efficient approach; eg for safety issues and emergencies. There could perhaps be a more formal relationship with end users for connection issues (but this should be optional).

In discussion, Allens Arthur Robinson have put the view that a contractual distributor-end user relationship is necessary in gas in order to continue rights which would disappear with the demise of certain jurisdictional legislation – eg right of entry to end-user premises for meter reading. But there other effective ways of dealing with this matter. Under Alinta's Tariff Transportation Agreement in respect of its NSW gas network, users of the network (ie retailers) are required to provide satisfactory access to each site, and where that does not happen then there are commercial remedies available¹³. Putting the network in a position of having to enforce rights of entry to

¹¹ RPWG Consultation Paper No 2, December 2006, section 4.4 p 32

¹² Ibid

¹³ For example, clause 1.2 '**Service Provider's power of entry**'

'The Service Provider may, and the User must, use reasonable endeavours to procure that the Service Provider may, at all reasonable times, and without giving prior notice to the User or the User's customer, enter and have access to any Delivery Point:

- (a) to obtain access to any Measuring Equipment;
- (b) for any purpose associated with this Agreement; or
- (c) under any power conferred on the Service Provider by law,

premises directly with end-users effectively adds nothing. Further, the view that a legislative basis for entry to premises will not be available is far from clear. Certain powers of entry are presently available and could be generalised to any meter-reading function (whether performed by distributors or anyone else).¹⁴

Considerations for electricity

The reasons for jurisdictions establishing a formal distributor/end-user relationship in electricity are varied. Alinta observes however that this practice does not accord with or exhibit an understanding of an access framework. A useful comparison may be with telcos and access. In a highly technical operating environment, customers do not have any relationship at all with the infrastructure owner but only with the retailer.

Conclusions from the above:

- Alinta submits that the existing linear contractual model between distributors and retailers should continue to apply in gas. Distributors may elect to arrange with retailers to deal directly with end users on certain network matters, but this should be an optional arrangement and not an enforced one.
- Alinta acknowledges that the tripartite relationship generally prevailing in electricity is an established one, and would be difficult to change in the short term without disruption. Alinta suggests retaining a stakeholder-agreed form of tripartite relationship in electricity. However, this relationship should be capable of being reviewed in the future under a rule-change process.

6. The distributor relationship with retailers

Alinta considers that the composite paper's treatment of this issue (which covers essentially the same ground as Working Paper 2) does not reflect an accurate understanding of the access framework (established by Part IIIA and the Competition Principles Agreement) which is currently operating in gas and partially in electricity. To explain why, the paper's reasoning needs to be worked through.

The paper begins by observing that the key commercial and financial terms relating to distribution services are established in contractual arrangements between distributor and retailer, and that this is part of economic access regulation which is outside the scope of the paper.¹⁵

The paper then observes that there is also '*a range of operational and coordination issues that relate to the joint provision of services to retail customers*'.¹⁶ Leaving aside for the moment the contention that there is a 'joint provision of services' to retail customers, certainly in gas, the paper draws a distinction between:

free of any charge or hindrance from the User or any other person.'

¹⁴ For example, the NSW Gas Supply Act 1996 provides that:

55 Powers of entry

(1) A gas industry inspector may enter any premises for the purpose of exercising any function conferred or imposed on a network operator by or under this Act, including:

(c) reading gas meters -----

¹⁵ Op cit section 8.2 p 48

¹⁶ Ibid

- contractual provisions (and regulation) relating to economic access regulation; eg pricing, contracted capacity and capacity management, curtailment, compliance with technical standards, metering and ancillary services;
- contractual provisions (and regulation) relating to interface issues; eg connection, disconnection and reconnection of customers, information exchange between retailer and distributor, referral of customer complaints between retailer and distributor, allocation of liability with reference to end-users.

Alinta observes that this distinction drawn in the composite paper is not correct. In respect of gas, the paper clearly does not understand the access framework.

In electricity, the paper suggests that both types of provisions are currently dealt with together in the form of Use of System Agreements (UoSA) or coordination agreements.

In gas, the paper suggests that there is a split of provisions, whereby economic matters are addressed through terms and conditions in a distributor's access arrangement and the interface issues are dealt with primarily in regulatory obligations.

As a result, the paper recommends:

- in electricity, provision for a UoSA between the relevant distributors and retailers;
- in gas, provision for an interface contract which would be distinct from the contract dealing with access terms and conditions.¹⁷

Alinta makes the following observations that apply equally to electricity and gas:

- the paper's assumption that so-called 'economic' and 'interface' elements are somehow different and can be addressed in separate contracts does not recognise that both elements involve a cost and must be considered together in determining prices for the total distribution service provided to retailers;
- the distinction between 'economic' and 'interface' contracts is entirely artificial – for example information provision and liability issues arise equally in respect of technical and customer-related matters. They are both elements of economic regulation;
- regulatory obligations of any kind must be factored in to the prices and terms and conditions forming part of any complete regulatory proposal – it does not matter whether the obligations sit in law, regulations, rules, licence conditions, codes or 'deemed contracts';
- Alinta considers that the recommendation in the composite paper to essentially de-link components of economic regulation exhibits a misunderstanding of access (including its application to the Gas Access Regime). This has been facilitated by the artificial division between price and non-price regulation under MCE's separate work streams (see section 7 below).

Alinta recognises that, to date, the commercially focused nature of a distributor-retailer contract has not operated as distinctively in electricity, and is therefore less effective than it has been in gas. Electricity distributors have not operated under a national access regime. Jurisdictional legislation has given regulators the power to unilaterally set prices and associated terms and conditions,

¹⁷ Op cit section 8.2 p 50

subject to some elements of the National Electricity Code/Law, without a requirement for complete and independently-developed proposals from DNSPs.

However, electricity is changing. The proposed amendments to the NEL for distribution and the proposed electricity distribution Rules will introduce more clearly defined elements of an access framework in electricity distribution. These will include a requirement for a DNSP to make a complete regulatory proposal and the potential for negotiation/arbitration in some services.

Despite the paper's disclaimer noted above, Alinta considers that the paper's suite of recommendations for the distributor-retailer relationship ignore and overlap with the existing economic regulatory frameworks - very substantially so for gas. This is evident from the compulsory nature of the paper's recommendations which override any concept of a negotiated contract or of a distributor proposing terms and conditions, including:

- The composite paper's use of nomenclature, with the word "interface" itself indicating a poor understanding of the value of a contractual relationship;
- The Law to provide for a deemed interface agreement to arise between relevant distributors and retailers rather than an initial negotiation (recommendation 33);
- The Law to provide for the Rules to make provision for the approval of the terms and conditions of a deemed interface contract, including matters specified in a Schedule to the Law (recommendation 34);
- The Rules to include several provisions for a deemed interface contract, including model terms for adoption by distributors as contractual terms (recommendation 35);
- The Rules to include an obligation on distributors and retailers to comply with the terms of deemed interface contracts. Compliance would be both a contractual obligation enforceable between the parties and a regulatory obligation enforceable by the AER (recommendation 36);
- A corollary of recommendation 36 is that, in the context of an access dispute, the terms of a deemed interface agreement could not be varied by arbitration.

Acceptance of the above recommendations would, in Alinta's view, cast strong doubt on compliance of a non-price framework with the Competition Principles Agreement. Alinta submits that the recommendations of the composite paper requires fundamental reconsideration to ensure that commercial contracting remains a primary element in a access framework capable of certification under Part IIIA of the Trade Practices Act.

Alinta's former proposal

In its submission on Working Paper 2¹⁸, Alinta proposed an alternative relationship model which better fitted a consistent national framework for both electricity and gas without overlapping established economic regulation and which better reflects Part IIIA:

- Distributors would be required to provide their proposed 'standard terms and conditions' to the regulator for approval at the time of making their price review or access arrangement review proposals. These terms and conditions would undergo public consultation and review as part of the price review or access arrangement review process and would be approved and take effect at the same time as the Price Determination or Access Arrangement.

¹⁸ Alinta response to Retail Policy Working Group Working Paper 2, 9 February 2007, page 5

- These standard terms and conditions would define the relationship between the distributor and retailer. However, there should not be any 'model' terms and conditions in the Rules. Instead, distributors would propose its own terms and conditions at the time of the access arrangement or price review that would reflect the distributors' own circumstances and any other regulatory obligation.
- In the case of electricity, these approved standard terms and conditions could take the form of a default Use of System Agreement approved by the regulator in a price review. In the case of gas, these approved standard terms and conditions would continue to be the reference point from which any terms and conditions offered in a retailer contract would be compared should a dispute over the offered terms and conditions arise.

Alinta suggested that this model provided national consistency of framework and approach, while allowing flexibility to accommodate the inherent differences in gas and electricity, as well as, possibly, across different geographic areas and customer classes. It also recognised the strong interrelationship between distributor's prices and the terms and conditions upon which the distributor provides its services. The impact on existing regulatory and contractual arrangements was minimised and any necessary transitional arrangements could be accommodated.

7. Link between price and non-price regulation

Alinta submits that it is vital to recognise that there is a strong link between price (ie economic) regulation and the non-price regulation being handled by the RPWG. Non-price regulation is a component of economic regulation. The MCE's separate work streams have created an artificial division between these components.

Under the economic regulatory framework, each distributor's:

- price determination or access arrangement;
- terms and conditions forming part of the price determination or access arrangement; and
- particular contracts with customers (if any),

form a complete package which define the prices and services that the distributor provides. Consequently, it is necessary for all these elements to be considered together and not in isolation or at different times. A change in any one element is likely to have an impact on other elements. Alinta considers it essential that the access pricing rules developed by MCE/SCO recognise any potential impact arising from RPWG recommendations on non-price terms and conditions.

PART D – OTHER HIGH LEVEL ISSUES

Some recommendations in the composite paper are new or have been revised from earlier working papers, and these require comment. In addition, Alinta considers it may be useful to summarise generally its position on major RPWG issues.

However, as noted in section 2, there would seem little point in Alinta commenting on each of the very detailed recommendations in the composite paper until the future policy direction of the RPWG framework development process is made clear.

8. Obligation to provide connection services (Working Paper 2)

Alinta general position

- No distributor, either gas or electricity, should be required to make a connection to a customer that is not commercially prudent. The Rules should recognise this;
- Alinta submits that provision for a connection service can be included in a distributor's access arrangement, if there is to be such an obligation;
- Alinta suggests there is a case for not requiring any connection obligation at all given a distributor's obvious imperative to make commercial connections;
- However, given that an obligation may be required, a distributor's primary obligation should be to make a fair and reasonable offer to all parties for connection to its distribution system, subject to technical or access requirements. The obligation to connect would arise when the offer is accepted;
- The offer to connect should only include (a) the connection of the premises to the distribution network to allow the supply of energy from the network to the premises; and (b) increasing the maximum capacity of an existing connection;
- The Rules should clarify that energisation of an existing service, or simultaneous connection and energisation, can only be carried out if there is a known attributable retailer.¹⁹

'Local Network Service Provider'

Working Paper 2 proposed that the connection obligation should be defined in geographical terms, and introduced the concept of a 'Local Network Service Provider'.

Respondents (including Alinta) argued that this concept was not workable for gas. Alinta welcomes the composite paper's withdrawal of the concept, and its replacement by defining the obligation in terms of '*any distributor whose network services are subject to access regulation under the Rules*'.²⁰

Definition of 'distribution services'

The composite paper has proposed a revised definition of distribution services. Alinta does not wish to comment on the definition but rather the observation on page 40 of the paper that the definition '*serves the specific purpose of defining distributor connection obligations and is separate from any associated definitions that may be used in the economic legislative package*'.

This comment appears to suggest a difference between the concept of distribution services proposed for the RPWG process and the definition of distribution services proposed for economic regulation. If so, this is a matter for significant concern. Part C above explained that economic regulation encompasses a total package of services proposed by the regulated entity. Alinta submits that there must be an overall conceptual basis for all distributor services subject to economic regulation. Any confusion of nomenclature needs to be removed by the use of precise terms.

9. Business Authorisation (Working Paper 3)

Alinta general position

¹⁹ Unless in the case of electricity the customer is a market participant or, in the case of gas, if the customer has capacity reservation for the haulage of gas.

²⁰ Composite paper, p 39

- Alinta supports a national framework for business authorisation, administered by the AER, for distributors and retailers of gas and electricity;
- Any approach that leads to duplicate national/jurisdictional licensing processes should be avoided. If significant jurisdictional licensing is retained, then it would be better not to have a national approach at all;
- Where a jurisdiction has granted an authorisation for a distributor, that distributor should be recognised as licensed for the purposes of the national framework;
- The substantive regulatory obligations of distributors should not be contained in licences.

Alinta agreed with the observation in Working Paper 3 that in a national framework there was a need to address ancillary rights and powers granted to distributors under jurisdictional legislation.

Alinta comment on composite paper recommendations

It appears that the majority of Alinta's concerns have been addressed within the framework proposed in the composite paper. Alinta particularly notes the comment on page 61 that market registration (whether under a specified national electricity or gas scheme) should not act as an effective substitute for a business authorisation, and therefore endorses;

- Recommendation 40 which details entry requirements to be specified in the Law;
- Recommendation 41 which correspondingly modifies NEMMCO registration requirements;
- Recommendation 43 which supports current jurisdictional licences being transitioned to a national business authorisation without further process;
- Recommendation 48 which supports jurisdictional ancillary rights and powers being dealt with in jurisdictional legislation.

10. Ring fencing (Working Paper 3)

Alinta general position

- Alinta endorsed option 2 in Working Paper 3 that essentially the same ring fencing arrangements should apply for electricity distribution and gas distribution;
- Alinta observed that ring-fencing is an integral component of economic regulation and cannot be sensibly addressed outside that context.

Alinta comment on composite paper recommendations

A number of Alinta's positions have been replicated in recommendation 49 of the composite paper, albeit with a considerable number of ancillary conditions. The primary condition is that:

Electricity ring fencing requirements should be included primarily in the NEL, modelled on the equivalent requirements included in the exposure draft of the NGL (but incorporating changes proposed to be made to be made by the SCO in response to submissions on the NGL)²¹

Alinta observes that ring fencing is a fundamental part of economic regulation and must be addressed within that context.

11. Retail failure (Working Paper 3)

Alinta general position

- Alinta agreed with the Working Paper's views that there were significant, perhaps necessary, differences between gas and electricity in developing a national retail failure framework. This would therefore require a significant amount of further work and consultation;
- Alinta supported the paper's recommendation that the AEMC be given a directive to consult on and develop rules in this area and that the current jurisdictional arrangements continue until these rules were developed.

Alinta comment on composite paper recommendations

The composite paper has essentially followed option 2 in Working Paper 3, which Alinta supported. However, it appears certain submissions questioned the suitability of the AEMC to develop the initial rules, citing the AEMC's possible approach to the task and its lack of resources to give priority to the task. As a result, the submissions suggested that the MCE should form an expert panel to advise on the development of a RoLR scheme for implementation in the 2007 package. The composite paper has allowed that this may be a possibility, although the initial recommendation to use the AEMC has not been altered.

Alinta does not see why another process outside established rule making/advisory channels (eg the RPWG itself, the AEMC and NEMMCO) should be brought into rule making at this late stage. Alinta also queries what kinds of instructions would be given to this outside body, given that legislation has defined specific rule making processes for the AEMC and an overarching requirement to observe the market objective in rule making. If indeed there is a resource issue for the AEMC in developing a

²¹ Ibid p 70

RoLR scheme, then this should be addressed with additional resources, and not by the partial and indirect method which has been suggested.

12. Customer registration and transfer (Working Paper 4)

Alinta general position

- Alinta supported most of the Paper's findings, which generally recommended bringing the existing jurisdictional rules under the national framework; 'grand-fathering' the content of the existing rules; and allowing a nationally consistent set of rules to be consulted on and developed over time. Some exceptions were:

Customer Registration and Transfers - Electricity

- Alinta did not support the Paper's recommended option to consolidate the existing jurisdictional requirements into a single set of nationally consistent requirements at the time of incorporating them into the NER and MSATS procedures. Alinta supported an alternative option, where the current jurisdictional rules for registration and transfer would be incorporated in the NER and MSATS procedures. The development of nationally consistent rules would then be prioritised and developed through the appropriate consultation and rule change processes under the NEL.

Customer Registration and Transfers – Gas

- Alinta urged that recognition of the access arrangement as the approved basis for terms and conditions of access (including, where appropriate, customer registration and transfer issues) should be maintained.

Alinta comment on composite paper recommendations

In line with Alinta's position above, the composite paper notes that distribution businesses did not agree with harmonisation of electricity customer transfer requirements prior to incorporation in a national framework. However, the paper has maintained this recommendation, observing that distributors' concerns are *'likely to be of a transitional nature'*²².

13. Metering (Working Paper 4)

Alinta general position

Alinta generally agreed with Working Paper 4 recommendations for gas metering. However, there was a notable exception for electricity:

Electricity metering (NEM jurisdictions)

- Alinta strongly disagreed with recommendation to take the current NEMMCO metrology harmonisation program to draft stage, then implement the draft recommendations by Ministerial Order in the 2007 legislative package, since this approach would by-pass the normal

²² Composite paper p 77

AEMC/NEMMCO consultation procedures.²³ Alinta considered it more important to have a robust and durable set of rules rather than forcing near-term changes for the sake of national 'consistency.'

Alinta comment on composite paper recommendations

Section 14.2 of the composite paper acknowledges the substantial progress already made by NEMMCO on harmonising metering regulation in the NEM Metrology Program. The paper observes that if the NER can be appropriately amended prior to the 2007 legislative package, no further action would be required by the RPWG (with regard to matters being currently addressed by NEMMCO).

However, the paper expresses concern with timing and the need to avoid complex transitional arrangements. The paper has a revised recommendation which suggests that amendments to the NER could be made via the normal change procedures for the NER/NEM Metrology Program or via a Ministerial Order, depending on timing issues.

Given that there has been a MCE decision to move implementation of the 2007 legislative package back to 1 July 2008, Alinta suggests that timing may not be such a pressing issue for NER metrology amendments. Some considerations are:

- Amendments to the NER²⁴ contemplate that the AEMC will have completed its consultation and made a final determination on the incorporation of 1st tier metering installations into the NER. We understand that NEMMCO intend to consult on the 1st tier changes to the metrology procedure in tandem to the AEMC Rule changes consultation. Approximately 10 months is therefore available for the AEMC and NEMMCO consultation processes to be completed, which is consistent with the timeframes achieved for the 2nd tier harmonisation process;
- Immediate legislative changes in anticipation of the 2007 legislative package would therefore appear to be unnecessary.

In any event, Alinta still considers it more important to have a robust and durable set of rules rather than forced 'harmonisation' and therefore maintains that the NEMMCO process should be completed prior to incorporation in the Rules.

14. Enforcement mechanisms (Working Paper 5)

Alinta general position

- Alinta submitted that a fair and robust enforcement approach should have a number of characteristics, including:
 - encouraging communication between the regulator and the regulated entity;
 - requiring the regulator to apply an enforcement mechanism that is commensurate with the obligation breached and the nature of the breach, and only allowing the regulator to move to a stronger enforcement mechanism when previous approaches are exhausted; and
 - leaves the ultimate assessment of regulatory compliance to the courts.

²³ Alinta submitted that there was already significant progress made in the development of nationally consistent rules and the preferred approach was to allow this process to continue to run and not attempt to fast-track it. The current process had the acceptance of market participants and jurisdictions as an appropriate way forward.

²⁴ Schedule 7.2 contemplates a 1 January 2008 final

- Alinta also considered that there should only be an obligation to notify the regulator of any 'material' breach (not 'any' breach as recommended in the Working Paper);
- Alinta supported providing the Regulator with the power to accept enforceable undertakings from the regulated entity.
- Alinta cautiously endorsed some provisions for private enforcement action;
- Alinta submitted that in the (rare) situations where court proceedings do occur, it would be more appropriate for these matters to be heard in a superior court.

Alinta comment on composite paper recommendations

The composite paper noted comments in submissions that the recommendations on compliance monitoring should provide for: a materiality test (as suggested by Alinta), flexible audit requirements and a requirement on the AER to publish results of audits and its enforcement activities generally. To address these matters the composite paper proposes:

- Putting relevant enabling provisions in the Law; and
- Authorising the AER to establish its detailed requirements through guidelines, consistent with the approach adopted in jurisdictional regulation.

Alinta does not consider that this recommendation is an adequate response to issues raised by stakeholders. From Alinta's assessment of submissions, stakeholders were seeking greater certainty over the AER's actions in relation to compliance and enforcement, and that these should therefore be matters for the Law and Rules (which could in practice be supported by guidelines). Instead, it is proposed to give the AER total control of these matters through a regulatory instrument, without (it would appear) any overarching guidance in the Law or Rules as to how this power should be used.

One of Alinta's key concerns was to establish a requirement on the regulator to apply an enforcement mechanism that was commensurate with the obligation breached and the nature of the breach, and only allowing the regulator to move to a stronger enforcement mechanism when previous approaches were exhausted. However, the composite paper has rejected any concept of the Law or Rules specifying the order in which particular remedies should be applied.²⁵ The paper appears to suggest that AER guidelines (applying to both electricity and gas) would again be sufficient to address this issue.

Overall, the composite paper does not appear to have adequately addressed stakeholder concerns with the degree of AER discretion to determine which enforcement mechanisms should be used in dealing with particular breaches. Alinta is concerned that:

- There is a risk of the AER considering itself obliged to apply stronger rather than lighter remedial action;
- The fact that there are strong powers available encourages a general view that because they are there, they ought to be used.

Alinta urges that these pressures should be counteracted by clear guidance in the Law and Rules as to how the AER must apply its discretion in the selection of enforcement mechanisms.

²⁵ Composite Paper p 92