

Ministerial Council on Energy

Energy Market Reform Bulletin No. 64

Amended Australian Energy Market Agreement Endorsed

The Ministerial Council on Energy (MCE) is pleased to announce that the Council of Australian Governments (COAG) has endorsed a number of amendments to the Australian Energy Market Agreement 2004 (AEMA). The amendments recognise the substantial progress that has been made in energy market reform and provide a foundation for future development and implementation of energy reforms.

Broadly, the amendments to the 2004 AEMA will:

- Confirm that the national approach to energy access will be State and Territory certified regimes. This will achieve national consistency both within and between the gas and electricity access regimes with minimal variation;
- Establish the national framework for distribution and retail regulation within the Australian Energy Regulator (AER) and Australian Energy Market Commission (AEMC) governance arrangements. The national framework will be fully implemented by 1 January 2008. The AEMA also recognises the functions that will remain at a State and Territory level;
- Transfer economic regulation of distribution networks to the AER from 1 January 2007 for reviews which begin after that date;
- Provide the basis for phasing out retail price regulation where regulation is no longer needed to protect the interests of consumers;
- Recognise the establishment and operation of the AER and AEMC and set out a long term funding arrangement for each body without recourse to a national industry levy;
- Confirm future gas arrangements though a National Gas Law to be established by lead legislation in South Australia;
- Streamline consultation and cooperation between the AER, AEMC, Australian Competition and Consumer Commission (ACCC) and National Competition Council (NCC) in performing their various roles in relation to energy markets; and
- Streamline the governance of the gas regime through the staged replacement of the Natural Gas Pipelines Access Agreement 1997.

The [amended AEMA](#) can be accessed at the MCE website and a detailed explanation of the changes to the AEMA is at Attachment A to this bulletin.

MCE Standing Committee of Officials
07 June 2006

The following notes set out the nature of the amendments to each clause of the AEMA.

1. PRELIMINARY

Clause 1.3 has been amended so that the AEMA replaces the Natural Gas Pipelines Access Agreement 1997 on the commencement of the National Gas Law.

The definitions in sub-clause 1.6 have been updated to recognise recent legislative developments and the new terms used in the amended agreement.

2. OBJECTIVES

The objectives of the AEMA have not changed.

3. OPERATION OF AGREEMENT

This clause has not changed.

4. MINISTERIAL COUNCIL ON ENERGY

The MCE's role in energy markets has been clarified to reflect the recent energy legislation and other amendments to the AEMA. The principle that MCE will not be engaged directly in the day-to-day operation of the energy markets or the conduct of regulators has not been diminished.

5. AUSTRALIAN ENERGY MARKET INSTITUTIONS

The clause recognises the AEMA's role in agreeing to the establishment of the AER and AEMC and reaffirms each party's agreement to the conferral of functions and powers and impositions of duties on those institutions consistent with the requirement in s. 44AI of the *Trade Practices Act 1974*.

6. AUSTRALIAN ENERGY MARKET LEGISLATION

The clause updates the arrangements for the cooperative scheme for the National Electricity Law and National Gas Law. The currently limited participation of Western Australia and the Northern Territory in the national arrangements continues to be recognised.

7. APPOINTMENTS TO THE AEMC AND THE AER

The clause updates the appointment processes in light of the legislation establishing the AER and AEMC.

8. FUNCTIONS OF THE AEMC

The AEMC's functions have been clarified in light of the enactment of the revised National Electricity Law and future enactment of the National Gas Law.

9. FUNCTIONS OF THE AER

The AER's functions have been clarified in light of the enactment of the revised National Electricity Law and future enactment of the National Gas Law.

10. FUNDING ARRANGEMENTS

The Commonwealth has agreed to fully budget fund the AER and the States and Territories have agreed to fund the AEMC rather than impose a national industry levy to fund both bodies.

11. DISSOLUTION OF NGPAC, THE CODE REGISTRAR, NECA AND THE NET

The amendments recognise the staged dissolution of the above bodies in light of the implementation of the new governance arrangements.

12. REVIEW OF MINISTERIAL, AEMC AND AER DECISIONS

The amendments reaffirm the commitment to subject all decisions to judicial review and for the MCE to make and implement a decision on merits review in the gas and electricity regimes.

13. NATIONAL APPROACH TO ENERGY ACCESS

The amendments insert a new clause 13 to establish certification as the national approach to energy access based on nationally consistent approaches within and between the gas access regime and National Electricity Market (NEM). A process to minimise State and Territory variation from the gas and NEM access regimes has been agreed.

Coordinated and concurrent applications for certification will happen in accordance with an agreed timetable. The NCC will be consulted on substantial modifications to the access regimes helping to ensure the regimes remain certified.

14. THE NATIONAL FRAMEWORK FOR DISTRIBUTION AND RETAIL

This new clause implements the agreed framework for distribution and retail regulation to be fully implemented by 1 January 2008. The initial rules for the national distribution and retail functions will be developed with industry consultation and will be made by the MCE through Ministerial orders and will then be subject to the AEMC rule change process.

The national distribution and retail framework will commence with the transfer to the AER of economic regulation of distribution networks from 1 January 2007. It is proposed that the AER and AEMC will also have an appropriate national presence to carry out their regulatory and rule making functions for distribution and retail by 1 January 2008.

A number of distribution and retail functions will remain at a State or Territory level, but may be transferred to the National framework with the agreement of the Commonwealth. Redundant fees, levies and State and Territory legislative provisions, relating to those functions transferred to the national framework will consequently be removed.

Retail energy price controls are dealt with in sub-clauses 14.10 to 14.16. The AEMC (or Economic Regulation Authority in the case of Western Australia) is to undertake regular assessments on the effectiveness of competition in retail energy markets and provide independent advice to each jurisdiction on a regular basis. Reviews will be conducted every two years until all retail energy price controls are phased out. States and Territories retain the right to maintain reserve price regulation powers, obligation to supply arrangements and price monitoring to protect consumer interests provided these do not materially impede competition.

15. MOU BETWEEN AER, AEMC AND ACCC AND AEMC AND NCC

The memorandum of understanding arrangements have been updated to reflect the implementation of governance arrangements and national approach to energy access.

16. WITHDRAWAL OF PARTIES

This clause is renumbered but remains unchanged.

ANNEXURE 1 MCE REPORT TO COAG –SUMMARY OF RECOMMENDATIONS

This annexure remains unchanged.

ANNEXURE 2 DISTRIBUTION AND RETAIL FUNCTIONAL ALLOCATION

The annexure sets out the division between the national distribution and retail functions and the State and Territory distribution and retail functions. It is noted that a State or Territory may elect to transfer any of the functions in this annexure to the national framework.

ANNEXURE 3 INDICATORS OF COMPETITION IN RETAIL ENERGY MARKETS

This annexure sets out the high level principles to guide the reviews of effective competition in retail energy markets.

ANNEXURE 4 CONTINUING OBLIGATIONS FROM THE NATURAL GAS PIPELINES ACCESS AGREEMENT 1997

This annexure sets out the licensing and franchising principles which remain from the Natural Gas Pipelines Access Agreement 1997. During 2006, the MCE will be making another subsidiary agreement to formally confirm the allocation of functional responsibility for coverage and classification decisions.