

WH

Streamlining the Code Change Process
C/- MCE Market Reform
Department of Industry, Tourism and Resources
GPO Box 9839
Canberra ACT 2601

7 April 2004

STREAMLINING OF CHANGE OF CODE PROCESS

Via E-mail: MCEMarketReform@industry.gov.au

Dear Sir,

I refer to the discussion paper on the above matter released by the Ministerial Council on Energy Standing Committee of Officials (SCO) dated March 2004 and the invitation extended to interested parties to provide comments on the range of issues discussed in that paper. Delta would like to thank the SCO for the opportunity to provide comments on this important matter.

Delta has participated in the development of the National Generator Forum's submission to the SCO on this matter and fully supports that submission's comments and recommendations. Delta also supports the separate submission by the esaa on this matter and considers that both these submissions raise similar concerns about the inadequacy of the abbreviated consultation process on what are vital issues of concern for the whole electricity supply industry, and concerns about whether the proposed code change process will adequately remedy the existing perceived deficiencies regarding lack of single point accountability by NEM institutions and duplication of processes.

Delta is particularly concerned about how the ACCC authorisation process will be handled. We are of the view that the proposal detailed in the discussion paper is flawed from a legal perspective and will be problematic to introduce. The legal advice that the NGF has obtained indicates that the assumption that the code can have various bits approved whilst others do not require such authorisation is not sound. Delta considers this to be a potentially dangerous practice and one which could leave the participants open to action by an aggrieved party for a breach of the Trade Practices Act.

Other issues which we consider are material and should be addressed include:

- The expansion of rights to initiate code changes to "any other person" when combined with the right for judicial appeal against decisions of the AEMC may mean that the process of

STREAMLINING OF CHANGE OF CODE PROCESS

code change may be further delayed if party's (particularly non-participant parties) avail themselves of the opportunity to appeal such decisions.

- The right for the AEMC to develop its own proposed code changes (through their market development role) represents a potential conflict of interest if they are also the body that is responsible for the review and approval of that proposed code change. The requirement for the AEMC to submit that proposed change to the MCE for approval may not be an adequate check against such conflicts.
- The requirement for the AEMC to establish that a real problem exists before a code change is progressed. The AEMC should undertake its own analysis to determine whether the alleged problem is significant enough to warrant a code change.
- Exchange of confidential information between the regulatory bodies. The current proposal does not provide comfort that confidential information provided to one of the NEM institutions for a specific purpose will not subsequently be shared with the other bodies even though they have no direct need for that information. This possibility is increased if the regulatory bodies share personnel as is proposed with the secondment of staff between the ACCC and the AER. It is considered that improved ring fencing arrangements between the regulators, particularly for confidential information, is required.

The NGF has detailed a proposed approach which may be able to address the problems inherent with the separate ACCC authorisation process. Delta commends that approach to the SCO and considers that further work should be undertaken by the SCO to consult on this proposed alternate framework before the final governance arrangements are legislated.

If you have any enquiries on this matter please contact either myself on tel: (02) 9285 2715 or alternatively, Delta's Regulatory Manager, Garry Johnson on tel: (02) 9285 2716

Yours Faithfully



Tim Baker
General Manager Marketing